MONTANA LEGISLATIVE HISTORY

Chapter 221 19 97

Bill H _____ S 343 Original bill & history ✓ C

H. Committee on Transportation			S. Committee on Business & Industry		
Hearing Date(s)	3/14	✓ C	Hearing Date(s)	2/18	✓ C
		C			C
		C			C
		C			C
Date Out	3/21	✓ C		2/20	✓

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

4/10	3RD READING CONCURRED AS AMENDED	48	2
4/15	SIGNED BY PRESIDENT		
4/16	SIGNED BY SPEAKER		
4/16	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 353		
	EFFECTIVE DATE: 04/22/97		

SB 343 INTRODUCED BY THOMAS, ET AL. *LC0643 DRAFTER: KURTZ*

REVISE AND CLARIFY LAWS GOVERNING MOTOR VEHICLE DEALERS, MANUFACTURERS, AND DISTRIBUTORS

2/12	INTRODUCED		
2/12	FIRST READING		
2/12	REFERRED TO BUSINESS & INDUSTRY		
2/12	FISCAL NOTE REQUESTED		
2/15	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/18	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	50	0
2/25	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO TRANSPORTATION		
3/14	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	93	5
3/28	3RD READING CONCURRED	95	5
	RETURNED TO SENATE		
4/03	SIGNED BY PRESIDENT		
4/03	SIGNED BY SPEAKER		
4/07	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 221		
	EFFECTIVE DATE: 04/08/97		

SB 344 INTRODUCED BY HARP, ET AL. *LC1219 DRAFTER: NISS*

REQUIRE THE SECRETARY OF STATE TO COMPILE AND MAINTAIN A LIST OF ALL REGISTERED ELECTORS IN THE STATE

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO STATE ADMINISTRATION		
2/13	FISCAL NOTE REQUESTED		
2/18	HEARING		
2/19	FISCAL NOTE RECEIVED		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/19	FISCAL NOTE PRINTED		
2/22	2ND READING PASSED	49	1
2/24	3RD READING PASSED	49	1
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO STATE ADMINISTRATION		
3/07	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/03	2ND READING CONCURRED	80	19
4/04	3RD READING CONCURRED	80	18

Senate BILL NO. 343

INTRODUCED BY Thomas Gillan

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING LAWS GOVERNING MOTOR VEHICLE DEALERS, MANUFACTURERS, AND DISTRIBUTORS; AND AMENDING SECTIONS 61-4-101, 61-4-104, 61-4-120, 61-4-121, 61-4-131, 61-4-133, 61-4-134, 61-4-201, 61-4-205, 61-4-206, 61-4-207, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-4-101, MCA, is amended to read:

"61-4-101. Application for dealer's license or wholesaler's license. (1) (a) A verified application for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department by each person, firm, corporation, or association that, for commission or profit, engages in:

(i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, mobile homes, or special mobile equipment as defined in 61-1-104; or

(ii) business as a wholesaler as defined in 61-1-319.

(b) A licensed real estate broker or agent lawfully buying, selling, exchanging, taking for consignment, or acting as a broker of mobile homes is exempt from licensure under this section.

(c) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any 1 calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

(d) Each license application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required. Each application must be accompanied by the license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually,

and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department ~~prior to~~ before the expiration of the license, the licensee may operate the business and display dealer or demonstrator plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as provided in this subsection, the applicant ~~must~~ shall furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant ~~must~~ shall:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name, ~~and~~ address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) identify other dealerships owned by the applicant, identify all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclose whether the applicant or other person with interest in a dealership owned by the applicant has been convicted of a felony;

(iv) certify that the applicant has acquired and shall maintain motor vehicle liability insurance, pursuant to 61-6-301, for any vehicle offered for demonstration or loan to a customer;

~~(iii)~~(v) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

~~(iv)~~(vi) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

~~(v)~~(vii) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

~~(vi)~~(viii) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational

vehicle dealer and for the use of "RV" plates; as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates; or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set forth in subsections (2)(a)(i) ~~and (2)(a)(ii)~~ through (2)(a)(iv), provide:

(i) a statement that the:

(A) applicant has an established place of business that includes a lot or lots upon which motor vehicles may be displayed and a permanent nonresidential building on or contiguous to the lot or lots where records are kept and sales are made; or

(B) wholesaler applicant has an established place of business that includes a permanent nonresidential building or office where records are kept in order that those records may be inspected;

(ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that the person is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) If two or more vehicle dealer or wholesaler businesses share a location, all records, office facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's established place of business shall display a sign that indicates the firm name and that vehicles are offered for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

(e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) (a) The applicant for a dealer's or wholesaler's license shall also file with ~~his~~ the application a bond of ~~$25,000~~ $50,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a trailer wholesaler shall file the ~~$25,000~~ $50,000 surety bond only if special mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers are sold~~;~~. ~~otherwise, all~~ All other trailer dealer, motorcycle dealer, or wholesaler license

applicants shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same place of business, provided that all types of licenses are indicated on the face of the bond. All bonds must run to the state of Montana, must be approved by the department, ~~and~~ must be filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required."

Section 2. Section 61-4-104, MCA, is amended to read:

"**61-4-104. Record of purchase or sale.** A dealer or wholesaler licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description in the case of motor vehicles must also include the vehicle identification number and engine number, if any, ~~maker's number, if any, chassis number, if any, and other numbers or identification marks that appear on the motor vehicle~~ and must include a statement that a number has been obliterated, defaced, or changed if ~~such is the fact~~ that has occurred. In the case of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear ~~thereon~~ on the trailer, semitrailer, or special mobile equipment. The dealer or wholesaler must also have ~~in his possession,~~ a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle is delivered to ~~him~~ the dealer or wholesaler until it has been disposed of by ~~him~~ the dealer or wholesaler~~, a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler~~. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign the certificate of ownership or manufacturer's certificate of origin for vehicles sold. All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4), must be physically located and maintained within the building referred to

in 61-4-101(2)(b)(i). An authorized representative of the department, upon presentation of ~~his~~ the representative's credentials, may inspect and have access to and copy any records required under this chapter."

Section 3. Section 61-4-120, MCA, is amended to read:

"**61-4-120. Application for auto auction license -- general regulations.** (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises, including ~~(~~street address, city, county, and state~~)~~, where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative thereof, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct

a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of ~~$25,000~~ $50,000 and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually. A person who suffers loss or damage due to the unlawful conduct of an auto auction licensed under this section may proceed in the same manner as provided for licensed dealers and wholesalers in 61-4-101(3)(b).

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, date of sale, name, address, license number, and authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than $10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the auto auction to issue more than one temporary permit per vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed

on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the vehicle identification number ~~or~~ and engine number, if any; and

(ii) ~~other numbers or identification marks on the motor vehicle; and~~

~~(iii)~~ a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ownership at a location on the front or back of the certificate, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

(i) name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) ~~the~~ date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer data base or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgement for the buyer under the provisions of 61-3-206."

Section 4. Section 61-4-121, MCA, is amended to read:

"**61-4-121. Twenty-day permit -- limitation on issuance and transfer -- violation -- penalty.** (1) (a) A dealer may not issue more than one 20-day permit under 61-4-111 or 61-4-112 per vehicle sale.

(b) A dealer may not transfer 20-day permits to another dealer unless the dealer:

(i) notifies the department within 3 days of the transfer;

(ii) identifies to the department the dealer to whom any permits have been transferred;

(iii) informs the department of the date of the transfer and the quantity and serial numbers of vehicles covered by the transferred permits.

(2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege to issue 20-day permits for a period of time determined by the department."

Section 5. Section 61-4-131, MCA, is amended to read:

"**61-4-131. Definitions.** As used in 61-4-131 through 61-4-137, ~~the following definitions apply:~~

~~(1) "Department" means the department of commerce.~~

~~(2)~~ "~~Designated~~ designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership

interest in the dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed ~~him~~ the deceased in the motor vehicle dealership, or under the laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer."

Section 6. Section 61-4-133, MCA, is amended to read:

"**61-4-133. Refusal to honor succession to ownership -- notice required.** (1) If a manufacturer, factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer under the existing franchise agreement, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than ~~60~~ 90 days from the date ~~such~~ the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than ~~60~~ 90 days from the date ~~such~~ the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the family member and the department or if the department rules in favor of the complainant in a hearing held pursuant to 61-4-134, the franchise agreement ~~shall~~ must continue in effect subject to termination only as otherwise permitted by law."

Section 7. Section 61-4-134, MCA, is amended to read:

"**61-4-134. Procedure to determine right to succeed.** (1) Any designated family member who receives notice of the manufacturer's, factory branch, distributor's, or importer's refusal to honor ~~his~~ the family member's succession to the ownership and operation of the dealership may, within the ~~60-day~~ 90-day period, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal

by showing that the succession would be detrimental to the public interest or to the representation of the manufacturer, factory branch, distributor, or importer.

(3) The franchise agreement ~~shall~~ must continue in effect until the final ~~determination of the issues raised in the complaint~~ adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the designated family member. The manufacturer, factory branch, distributor, or importer and the designated family member shall abide by the terms of the franchise agreement and the laws of Montana during the appeals process.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to ~~part 7, chapter 4,~~ Title 2, chapter 4, part 7."

Section 8. Section 61-4-201, MCA, is amended to read:

"**61-4-201. Definitions.** As used in this part, the following definitions apply:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

~~(2) "Department" means the department of justice.~~

~~(3)~~(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

~~(4)~~(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

~~(5)~~(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

~~(6)~~(5) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to offer, sell, and service in this state new motor vehicles

manufactured or distributed by the franchisor;

(c) the franchisee, as a separate business, constitutes a component of franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

~~(7)~~(6) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services such new motor vehicles to and for the general public.

~~(8)~~(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

~~(9)~~(8) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

~~(10)~~(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment~~, which~~ that, when installed, ~~form~~ forms an integral part of the new motor vehicle and ~~which~~ that constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(10) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

(12) (a) "Retail sale" means the sale of a new motor vehicle.

(b) "Retail sale" does not mean a sale:

(i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or

(ii) that is the result of a transfer between two licensed new motor vehicle dealers."

Section 9. Section 61-4-205, MCA, is amended to read:

"**61-4-205. Limitations on cancellation and termination.** (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, ~~no~~ a franchisor may not cancel, terminate, or refuse to

continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) ~~No~~ A franchisor may not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and that it is in the public interest.

(3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than ~~30~~ 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. ~~No~~ A notice of intention to terminate or not continue a franchise ~~may be~~ is not required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice ~~shall~~ must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices ~~shall~~ must be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons~~, such copy to be in the form and substance and given in the manner the department finds appropriate~~.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event

of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse, son, or daughter, the franchisor shall give effect to ~~such a change~~ the sale or transfer of ownership in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, ~~no~~ a license under 61-4-101 through 61-4-105 may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor."

Section 10. Section 61-4-206, MCA, is amended to read:

"**61-4-206. Objections -- hearing.** (1) A person who receives or is entitled to receive a copy of a notice provided for in ~~subsection (4) of~~ 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If ~~no~~ an objection is not filed within 15 days from the date the notice was received, the proposed action ~~shall~~ must be approved.

(2) If a timely objection has been filed, the department shall enter an order fixing the time, which ~~shall~~ must be within 30 days of the date of the order, and place of a hearing on the objection and shall send by certified mail with return receipt requested a copy of the notice provided for in ~~subsection (4) of~~ 61-4-205(4).

(3) The department may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.

(4) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, ~~or~~ not continue, or not establish the franchise. ~~When there is an objection to the establishment of a new motor vehicle dealership, the burden of proof that good cause does exist shall be with the franchisor.~~

(5) The rules of evidence for ~~such~~ a hearing provided for in subsection (2) ~~shall be~~ are the same as those found in ~~chapter 4,~~ Title 2, chapter 4. The department shall reasonably apportion all costs between

the parties.

(6) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing ~~shall~~ must be conducted pursuant to ~~chapter 4,~~ Title 2, chapter 4.

(7) A transcript of the testimony of each witness taken at the hearing ~~shall~~ must be made and preserved. Within 30 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(8) Any party to the hearing before the department may appeal pursuant to ~~chapter 4,~~ Title 2, chapter 4.

(9) The franchise agreement must continue in effect until the adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process."

Section 11. Section 61-4-207, MCA, is amended to read:

"**61-4-207. Determination of good cause.** (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by the franchise;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of ~~his~~ the franchisee's part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for ~~such~~ warranty work performed by the franchisee;

and

(g) except as provided in subsection (2) ~~of this section~~, failure by the franchisee to substantially comply with ~~those~~ the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(a) a change in ownership of the franchisee's dealership; or

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make ~~which shall include the adequacy of new motor vehicle dealer sales and service facilities, equipment, supply of parts, and qualified management, sales, and service personnel~~."

Section 12. Section 61-4-208, MCA, is amended to read:

"**61-4-208.** ~~**Coercion prohibited**~~ **Prohibited acts**. (1) A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, importer, field representative, officer, agent, or any representative ~~thereof~~ of the persons or entities listed may not:

(a) coerce, ~~or~~ attempt to coerce, or require a new motor vehicle dealer to:

~~(1)~~(i) accept delivery of a new motor vehicle, a part, or an accessory ~~therefor~~ for a new motor vehicle or any other commodity that has not been ordered by the dealer;

~~(2)~~(ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices; ~~or~~

(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion;

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer that was established before [the effective date of this act] when those requirements are not justified by reasonable business considerations;

(v) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

~~(3)~~(vi) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative ~~thereof~~ of the listed persons or entities or do any other act unfair to the dealer by:

~~(a)~~(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative ~~thereof~~ of the listed persons or entities and the dealer; or

~~(b)~~(B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent ~~thereof~~ of the listed entities~~.~~;

(b) delay, refuse, or fail to deliver new vehicles in a reasonable time in reasonable quantity relative to the new vehicle dealer's facilities and sales potential after accepting an order from a new vehicle dealer if the new vehicles are publicly advertised as being available for immediate delivery; or

(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards.

(2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities."

NEW SECTION. **Section 13. Manufacturer's right of first refusal.** (1) Regardless of the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or

distributor may exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership. This may occur if the sale or transfer is conditioned upon either the manufacturer or dealer entering into a dealer agreement with the proposed new owner or transferee if all the following requirements are met:

(a) the manufacturer or distributor notifies the dealer in writing of the manufacturer's or dealer's intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale or transfer;

(b) the dealer and the dealer's owner receive the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;

(c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners or to a qualified manager, partnership, or corporation controlled by a member of the family of a dealer owner; and

(d) the manufacturer or distributor agrees to pay reasonable costs and attorney fees relative to the proposed changes in ownership or transfer of dealership assets. In order for costs and fees to be payable, the dealer shall submit an accounting of the expenses within 20 days of the dealer's receipt of the manufacturer's or distributor's written request for the accounting. The manufacturer or distributor may request the accounting before exercising the manufacturer's or distributor's right of first refusal.

(2) This section does not affect any contractual right of a manufacturer or distributor to charge back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's purchase of the vehicles.

NEW SECTION. **Section 14. Codification instruction.** [Section 13] is intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to [section 13].

NEW SECTION. **Section 15. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0343, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act revising and clarifying laws governing motor vehicle dealers, manufacturers, and distributors.

FISCAL IMPACT:
There is no fiscal impact to the state.

Dave Lewis 2-15-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Fred Thomas 2-15-97
FRED THOMAS, PRIMARY SPONSOR DATE

SENATE BUSINESS & INDUSTRY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0270	BENEDICT, STEVE 2/03	2/13	CLARIFY AND EXPAND LAWS GOVERNING INSURANCE AND SECURITIES FRAUD PASS AS AMENDED 02/21 VOTE: 6-0		2/21
SB0275	MILLER, KEN 2/03	2/12	REVISE RETAIL INSTALLMENT DELINQUENCY FEE PASS AS AMENDED 02/12 VOTE: 4-2		2/13
SB0276	MILLER, KEN 2/03	2/12	REVISE FINANCE CHARGES ON INSTALLMENT SALES DO PASS 02/12 VOTE: 4-2		2/13
SB0286	CRIPPEN, BRUCE 2/07	2/14	INCLUDE EXTERIOR ACCESS FOR PERSON WITH DISABILITY IN BUILDING CODE PASS AS AMENDED 02/19 VOTE: 6-0		2/19
SB0295	GROSFIELD, LORENTS 2/06	2/13	INCREASE PUBLIC INVOLVEMENT IN GAMBLING LICENSURE TABLED ON 02/17 VOTE: 6-0		
SB0312	GLASER, BILL 2/07	2/14	CREATE UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS SERVICES TABLED ON 03/07 VOTE: 6-0		
SB0343	THOMAS, FRED 2/12	2/18	REVISE SALE AND DISTRIBUTION OF MOTOR VEHICLES PASS AS AMENDED 02/20 VOTE: 6-0		2/21
SB0347	GLASER, BILL 2/13	2/18	REVISE PASSENGER ELEVATOR INSPECTION PROCESS FOR FIRE SAFETY TABLED ON 02/20 VOTE: 5-0		
SB0348	GLASER, BILL 2/13	2/18	ONE-STOP LICENSING FOR BUSINESS AND PROFESSIONAL LICENSES TABLED ON 02/19 VOTE: 5-1		
SB0376	HERTEL, JOHN 2/17	2/20	TREAT PERSONAL WATERCRAFT, SNOWMOBILE, OFF-HIGHWAY VEHICLE AS MOTOR VEHICLES ADVERSE RPT ADOPT 02/21 VOTE: 3-3		2/25
SB0378	BENEDICT, STEVE 2/17	2/20	GENERALLY REVISE INSURANCE LAWS; IMPLEMENT P.L.104-191 (KENNEDY-KASSEBAUM) PASS AS AMENDED 02/21 VOTE: 6-0		2/21
SB0379	LYNCH, J. D. 2/18	2/21	GEN. REVISING CONSUMER LOANS: LIMITS ON INSTALLMENT SIZE/TERM; SECURITY DEP. PASS AS AMENDED 02/21 VOTE: 6-0		2/21

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 18, 1999 at 8:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 446, 2/12/1999
	SB 452, 2/12/1999
	SB 453, 2/12/1999
	SB 430, 2/12/1999
	SB 470, 2/15/1999
	SB 490, 2/16/1999
Executive Action:	SB 470; SB 430
	SB 409; SB 419; SB 459

{Tape : 1; Side : A; Approx. Time Counter : 0}

Sponsor: **SEN. MIKE TAYLOR, SD 37, PROCTOR**

Proponents: **Mark Staples, MT Taverns Assoc.**
Paul Cartwright, Citizen

Closing by Sponsor:

SEN. GLASER closed. This is a bill that has its feet in frustration. I am just trying to do something for the people of Montana and improve our image in the public. My bill would have been a flood. HB 391 is just a trickle bill.

{Tape: 1; Side: B; Approx. Time Count: 10:10 AM; Comments: A 13 MINUTE BREAK WAS TAKEN..}

HEARING ON SB 343

Sponsor: **SENATOR FRED THOMAS, SD 31, STEVENSVILLE**

Proponents: **E. G. Leipheimer IV, Discovery Buick**
Joe Billion, J. C. Billion, Inc., Bozeman
Mike Grimes, Grimes Motors, Helena
David Owen, MT Chamber of Commerce
Brenda Nordlund, MT Department of Justice
Charles Brooks, Billings Chamber of Commerce
Dave Brown, MT Independent Automobile Assoc.
Bud Williams, MT Assoc. of Manufactured Homes & RV Dealers
Bob Gilbert MT Tow Truck Assoc.

Opponents: **Mona Jamison, American Automobile Manufacturing Assoc.**
Steve Blankenship, Ford Motor Co.
Calvin Eleby, American Automobile Manufacturing Assoc.

Opening Statement by Sponsor:

SENATOR FRED THOMAS, SD 31, STEVENSVILLE. I would like to present SB 343. This bill is introduced to continue the evolution of the franchise law as the business environment changes. This bill finds its roots in two bills introduced in the 1977 Legislature. It was first heard in a Senate committee 20 years ago. The environment was very different then than today. The manufacturers' corporate philosophy was that of expansion. Placing franchises anywhere that they could. The original bill was designed to recognize that fact at that time. The language precluded the manufacturers from opening dealerships in towns and cities where existing dealerships carried the same vehicle brands unless the manufacturers could provide the economics necessity and prove that necessity of additional brand makes in the same area or town. Six years ago, the Legislature amended the statutes to reflect another change in this industry. Better cars were being made with longer warranties. The provisions of the dealer laws at that time were modified to give dealers a fair return on reimbursement for warranty, labor and parts from the manufacturers. We can ask why the Legislature is seeing the need to consider this piece of legislation today. Simply, the economics of industry favors the manufacturers.

In a Montana Supreme Court case in 1988, the Court noted these statutes operated to regulate the relationship between the motor vehicle franchisor and its franchisees. This specific reference to legislative intent, the Court stated this: "Furthermore a review of the pertinent legislative history evinces or rather states the legislature's intent in designing the Montana automobile dealership law was to protect motor vehicle franchisees and dealers from injuries to which they were susceptible by virtue of economic inequality between themselves and their franchisors."

How much is the difference in economic inequality between these parties in Montana for example? If we take 1996 sales, Montana dealers did just fine. They sold about $1.4 billion in auto sales. The big three sold about $350 billion. About .4 of 1% or less of the market is in Montana. There is an inequality of the economy there.

Now we come before you today to amend the Montana auto dealership law. Again, to reflect the changes going on in industry. Today, the factories see the marketplace as one that must contract one bringing it in. All three of the U.S. companies now have stated corporate goals to downsize the number of dealerships across our country **(EXHIBIT 7).** As you can see from this handout, the policies are very public and very real. Chevrolet announced its plans to reduce the number of U.S. dealerships from 4,400 to 4,000, while mandating the reconfiguration of the product mix within the dealerships. These changes are a finality of which Montana's auto dealers are aware; however, the situation is not only in Montana, but in many other states as well. SB 343 addresses today's changing environment, and the changes must recognize the investment made by Montana's dealers to serve their customers in the rural nature of our state and the great differences in the distances between Montana cities and towns. These are the changes we are proposing: (1) Successor Rights. Dealers need to be assured their efforts to build a viable business in order to pass that business on to their children is not unfairly restricted by the actions of the manufacturers; (2) Transfer of Ownership. The Franchise Law must provide reasonable standards for the approvals and disapprovals for the transfer of ownership and the factories are given a statutory first right of refusal option; (3) Availability of Products. Dealers must be assured if they are making significant investments into facilities, equipment and training, they can expect a reasonable supply of vehicles from the manufacturers; (4) Dualing. Dealers with multiple-line makes need protection from arbitrary actions by manufacturers who should not be able to force dealers to eliminate existing line makeups from an existing dealership; (5) Unreasonable Manufacturer Demands. The Franchise Law should protect dealers from unreasonable capital and facility requirements demanded by the manufacturers. (6) Termination process should be free of arbitrary and capricious actions by the manufacturers and the dealers' investment must be treated fairly and reasonably by the manufacturers.

There is a small amendment on page 8, line 22. We want to strike the words "vehicles covered by".

{Tape: 1; Side: A; Approx. Time Count: 10:18 AM; Comments: N/A.}

Proponents' Testimony:

E. G. Leipheimer IV, Discovery Buick, Butte. I will present my testimony and hand in a written copy **(EXHIBIT 7B)**.

Joe Billion, J.C. Billion, Inc., Bozeman. I would like the Committee to understand a couple of things. The stated corporate goals of reducing the number of small dealers is actually all of Montana. All dealers in Montana are small. It is disconcerting when you look at what our future has in store for us. General Motors' stated goal is to cut the number of dealerships 20% from the current number. Ford wants to cut the U.S. dealer total and Chrysler has announced they want 600 fewer dealers. Those are Montana dealers, the ones that are families in our communities that are servicing our customers. In fact, when this franchise task force committee was formed, it was the result of a letter from General Motors **(EXHIBIT 8)**. It is called their "Year 2000 Plan". There are 36 Chevrolet dealers in Montana. 20 out of 36 dealers received this letter. I believe the majority of dealers in Montana got these non-viability letters. If you are a small dealer and received a letter like this, how do you sell your store? It takes the investment and the time that these people have put into their business and washes it down the drain.

I have been the Chairman of the Task Force and we spent over one year meeting with the dealers, with the attorneys and we gathered information from all other states that have passed legislation concerning these issues. The bill you have in front of you is the culmination of that year's work. Toward the end, we sat down with the manufacturers and tried to get their feelings on these issues. We did make progress with them. There are still some disagreements. This bill is a protection of the dealers and of local service. It also protects jobs here in Montana. We ask that you support this bill.

Mike Grimes, Grimes Motors, Helena. I would like to present my testimony and will hand in a written copy **(EXHIBIT 9)**. I would also like to present a letter that has become known as the "Zarrilla letter" **(EXHIBIT 10)**.

David Owen, MT Chamber of Commerce. I find myself in a cross fire here. My goal is to say nothing so no one will ask me any questions. I need to go to another committee meeting. But I would like to stand up on one principle here. We have national groups in the Chamber as well as state groups. I would like to appeal to the committee in their mission and urge you to cautiously be supportive of this bill. Listen well to the criticism of the bill. What I hear, though, is we admire the power of the contract, but we understand when parties don't have

equal standing in negotiating contracts. There are some overarching principles in this democracy when it relates to the ability to contract. And these are spelled out in the 1st Amendment. I know it is not your job to pick winners and losers, but you do have a responsibility to make sure there is a free and equal ability of people to have equal standing in negotiations. We do have laws already that address this issue. So we urge you to look at this carefully but with a supportive attitude.

Brenda Nordlund, Department of Justice. I will speak to aspects of this bill that haven't been spoken to but the Department appreciates the auto dealers working with us to make some changes in the dealer laws and enhance our ability to regulate dealers. These changes are not controversial for the most part. These changes include expanding the amount of information we can seek from dealers in the first instance in the application such as drivers licenses, vehicle registration, date of birth, social security number, names of all interested parties in the dealership and whether or not anyone has been convicted of a felony. Additionally, the bill includes on page 2, line 18 and 19 the fact that dealers will now have to certify that they will acquire and maintain the statutory required vehicle liability insurance for vehicles used by the public. It is a simple thing that is not stated in our law here before and this is a consumer protection addition. On page 4, line 2-14, we talk about the bonding that is required for dealers. There is some confusion in the current law as to whether or not the dealer can use more than one bond if they have different types of dealer licenses. This law on page 4, lines 26 and page 4, lines 2 and 4 talk about the fact that the bond would be increased to $50,000 and that one bond would be sufficient for a dealer irrespective of the number of licenses held at a particular location.

I would also like to refer to page 8, lines 18-22 which clarify conditions when a dealer may lend 20-day permits to other licensed dealers. This finally puts the Department in the loop so we are apprised of when 20-day stickers or permits go from dealer to dealer and we can track and inventory them. All we are asking here is that the dealer notify us of the serial numbers and when the transfer occurs. I want to bring to the committee's attention specifically that they are changing in this bill the responsibility for resolving dealer succession disputes. Currently all factory dealer disputes are resolved by the Department of Justice. Under current law, the Dept. of Commerce for some reason has been assigned the responsibility of succession relating to family members. This bill will put all of the transfer and termination of succession responsibility and adjudication under the Dept. of Justice.

Finally, I would like to speak briefly about the relationship between the dealers and manufacturers here today. I can appreciate the comments made by **Dave Owen**. It is not easy to stand up here and take one side or the other. From the Dept. of Justice's perspective, we are interested in avoiding f[illegible]

regionalization of car dealerships in Montana and in the Northwest. We believe that we need to maintain our rural communities. And a vital part of these rural communities is a car dealer. The geographic expanse of this state make it difficult if we would get down to the point where we just have a small number of dealers. We do support the efforts of the dealers to level the playing field.

{Tape: 1; Side: B; Approx. Time Count: 10:35 AM; Comments: N/A.}

Charles Brooks, Billings Chamber of Commerce. I come before you as a former hardware implement dealership. A few years ago we were faced with basically this same problem. The manufacturers made an open statement that they too wanted to shrink the number of farm implement dealerships in our state. We see this as a "main street" issue. We feel that Montana should be treated differently as we look at the fairness issue as far as our geographic situation and our small population is concerned. There is a second point I want to stress and that is the succession issue. If a person spends years building up a market share in order for someone in his family to take over, we feel this is unfair that the large manufacturers were going to be very restrictive and arbitrary. We highly support this bill.

Dave Brown, MT Independent Automobile Dealers Assoc. We wish to be on record as being in support of this bill. I would like to call your attention to page 2, lines 18 and 19. The certification of a motor vehicle liability insurance is now required, but it is our experience that many places allow people to try out cars and they do not have this liability insurance on these cars. We are strongly in favor of this part of the bill. We are also strongly in favor of page 4, lines 2, 3 and 4. Many dealers sell used cars, RV's and trailers, etc. and under this bill one bond only would be required. This would be good. On page 8 on 20-day permits, there are times that you run out of these stickers and under this bill a dealer could do that and let the Dept. of Justice know within three days.

My one problem with this bill is on page 3, lines 26-28 where the dealer bond is increased to $50,000 from the existing $25,000. We would ask you to amend this bill back to the $25,000 bond. If this bond is raised, the cost would just about double the existing cost from approximately $150 to $300. For small, reputable dealers who have been around for a long time, and only sell 10-20 cars a month, and if the bond goes to $50,000, the bonding companies are going to come looking at assets and many dealers won't have the assets to cover that $50,000 bond.

Bud Williams, Manufactured Housing and RV Dealers Assoc. We rise in support of the bill. We are particularly in support of these successor rights, transfer of ownership and termination actions.

Bob Gilbert, MT Automobile Dismantlers and Recyclers Assoc. and the MT Tow Truck Assoc. We do have a concern here at this time

and that is on page 3 where the bond is being raised from $25,000 to $50,000. This creates a problem for a dealer who may not sell many cars over $7,000 to $8,000. Already you have tripled the bond because this bond is per occurrence. There must be a way to establish a two-tier bond system so small dealers don't get hammered.

{Tape: 1; Side: B; Approx. Time Count: 10:46 AM; Comments: N/A.}

<u>Opponents' Testimony</u>:

Mona Jamison, Auto Manufacturers of America--GM, Chrysler, Ford. Since this industry is a core to the prosperity of this nation, I am happy to stand up and say I represent the car manufacturers.

I would like to address a few of the myths that you have heard today. We oppose this bill and for a variety of reasons. It is anti business; it is anti free market enterprise; it is anti contract and I think there are some constitutional issues raised concerning contracts.

There have been statements made that the dealers and manufacturers have met and there are lots of provisions in this bill that are not under contention. Many of the provisions have been made with a consensus agreement and we can live with those. There have been a few provisions in this bill where there has not been one inch of compromise. And we have amendments that we would like the committee to consider **(EXHIBIT 11)**.

{Tape: 2; Side: A; Approx. Time Count: 10:49 AM; Comments: N/A.}

Without the manufacturers, you would not have the dealers, You would not have the product that they proudly sell. This is a partnership between the manufacturers and the dealers. There are 150 "new car" dealerships in Montana. These cars are responsible for approximately 8000 jobs. Approximately 3500 of those jobs are related directly to the new cars and the remaining 4500 have to do with wholesale and repair and service. A $90 million dollar payroll comes to the State of Montana. When you do well, we do well.

What does this bill do? It is protectionist legislation and protects monopolies. It does two things primarily. It attempts to govern distribution of a product and sale of a product. Ironically, you have heard much testimony on successor ownership. That portion of the bill is not before you. We have resolved that in our prior meetings and a compromise has been worked out.

Another item deals with an administrative appeal aspect aside from the Dept. of Justice's business in this bill, which I find shocking. Look at page 16 and you will see the part of the bill where no compromise has occurred. This is the focal point of the bill. On lines 1-10, you are primarily dealing with what you heard as the dualing section. Lines 19-25 deal with the

allocation or distribution of product. What the bill attempts to do regarding dualing is restrict the manufacturer's right to approve or disapprove whether one of its franchisees can dual with another line make. It is like requiring McDonalds to sell Burger King along side their own product. And we are not dealing with a 79¢ product. We want and deserve grand focus. We know we cannot and will not terminate any dealer's right today to be marketing these competitive lines.

Another myth you have heard is that we are going to take some sort of action and jump away from some of these dealers who have competing lines. We will not and in fact the amendments that have been distributed to you that we have worked on make it very, very clear that **any existing dealer at whatever effective date is in this bill, would be protected and in the future, the dealer would have to ask permission.**

If you would go to the allocation sections, line 19, you will see these sections require vehicles on demand. There are 49 other states, and because of their population, those dealers require many more cars in each of those lines. We cannot promise this. With all the laws in the world, "on demand" cannot be done. It is also inconsistent with the national distribution policies of every car manufacturer in America. We are not in the business of denying dealers cars that they can sell. But to have a law in Montana that requires a manufacturer to provide a car on demand is just unrealistic. If a car is not available, it is not available--demand or no.

In reading lines 22-25, I still do not know what that means. It looks like it covers the world, or it can mean it covers nothing because of its lack of specificity.

We have amendments that prevent the manufacturer from implementing a plan of allocation that is not fair, reasonable or equitable. We were told by the dealers that this is all they want out of this bill. Our amendments address their goals. These amendments contain that language "fair, reasonable and equitable". The grandfathering language allows dualing that exists at every franchise up to a certain date but requires approval in the future. And as you see, there is nothing in the bill on successors.

You have heard about GM 2000 and have seen that letter. The language in that says they will monitor market conditions and future viability is questionable. It doesn't mean you can't sell; it doesn't mean you can't succeed; it doesn't mean you can be terminated. It means that they are watching just as government watches an ever expanding economy. Does this mean that government can tell the manufacturers that they cannot downsize through attrition?

On the Department of Justice sections, it is my feeling that this bill should have been two bills. The whole thing with the bond

and then dealing with us. I also think there is a conflict of interest. The Dept. of Justice is the one who enforces this and there is a provision in this bill that we agreed with the dealers that it should go from the Dept. of Commerce over to the Dept. of Justice for the enforcement. We agreed and it was taken off the plate. Now they are here supporting the bill that governs private relationships and the ability to contract. I find this very unusual. It makes the manufacturer think, are we going to get a fair shake when we get up there.

The last section we are concerned with has to deal with appeals on page 9. Our amendment covers that. On page 10, lines 1-7, this section is saying that when there is an issue between the dealer and the manufacturer on one of these issues, be it termination or whatever, they are proposing the dealership stays fully operational until that determination is made. This proposal extends the dealer operation until ALL appeals are over. There may be criminal activity or egregious business dealings but this would preserve the right to continue to operate all the way through the judicial process and we all know that can take forever.

What are the public policy issues that face you as I bring this to a close. I feel that you have to deal with the issue that is before you. As a state, how far do we go in governing the details of business relationships? How comfortable are we if it is in this area now and somewhere else next year? When will we be at the opposite side of the issue--and not be the beneficiary of the protection? It is ironic, the Constitution, Article II, Section 31 recognizes the ability of persons to contract and has a prohibition against "laws impairing obligation of contracts being passed by the legislature." Basically, this is a unilateral request by an association to change, to fix contract provisions. That is a concern. The next step may be that you are asked to approve the total contract. The ability in America to contract and conduct business is the defining characteristic of a free society and a non-socialistic society. The more we dictate the terms of these contract relationships, the closer we get to total government control. They have the opportunity to go to their attorney. If a person or dealer is harmed by a contract or by something a manufacturer does, there is redress in the statute and in other laws. I urge you to think about the decision to regulate every facet of the business relationship because it undermines market forces and puts the Legislature into the shoes of one of the negotiating parties.

Steve Blankenship, Ford Motor Co. The dualing issue is a concern. We would ask you level the playing field in terms of dualing. We give our dealers exclusive jurisdiction in the community. That means that they are the only place that sells Ford products. They in turn provide us with the kind of sales we need to keep our company going. What we are asking in this dualing amendment is that the decision to dual would be a joint decision. In terms of the allocations, you need to

Montana amendment and multiply it by 50. I am sure dealers in every state would like to have this allocation language that says they can get whatever they order. The Ford Motor Co. has a peculiar problem. The good news is our new trucks are selling very well; the bad news is we are at the limit of production and we can't supply dealers with all the trucks they want. We have tried to provide a fair and equitable situation so that all dealers have trucks but no dealer has as many trucks as they would like. Thank you.

Calvin Eleby, American Automobile Manufacturing Assoc., Detroit, MI. We stand in opposition to this bill.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked that since **Mr. Blankenship** was concerned with the allocation process and that there are no safeguards to things out of his control, wouldn't lines 26 and 27 on page 16 take care of these concerns. **Mr. Blankenship** answered that the orders that were accepted would have to be handled first and it could be argued that they could not go to an allocation system until the orders were first filled. **SEN. BENEDICT** asked how downsizing can be handled with no one getting hurt. **Mr. Blankenship** responded that Ford Motor Co. is looking at a realignment of Lincoln, Lincoln/Mercury dealerships. The possibility that some of the exclusive Lincoln or exclusive Mercury dealerships may be merged and redone. On the question of hurting people, if a dealership would have to be closed down, Ford Motor Co. would just buy it back. Most of our dealerships are closed because the people just walk away from them. If they are not making money it is hard to stay open. **SEN. BENEDICT** asked if he would guarantee that the only time you would downsize the number of dealerships in Montana would be through attrition. **Mr. Blankenship** said that no he could not guarantee that. Each case is handled in its own right.

SEN. BEA MCCARTHY asked about dualing. **Mr. Billion** responded that he had a fight with the manufacturer when he purchased the Mazda dealership and they requested that he put up a divider in the showroom. He further stated that when you get a contract there is not a lot of compromise. They can change the language to what they want and that is where the lack of negotiating on dualing gets bogged down. If they won't allow it, there will be no negotiating.

SEN. MCCARTHY asked **Mr. Grimes** if he wanted to buy another franchise, could he? **Mr. Grimes** felt that it would be very difficult. The testimony says trust me, but that is not the case all the time. He related a story of how the manufacturer has the upper hand when they want it. He said that they are not on a level playing field.

SEN. DEBBIE SHEA asked **Ms. Jamison** if the amendments affected their stance on dualing? **Ms. Jamison** said that this does not

affect the transfer issue. This only affects the number of line of cars a dealership handles. And there is no prohibition on any dealer buying different dealerships and in fact there is one family at the Miracle Mile Auto Mall that owns two of those beautiful dealerships. The issue is not the ownership of different dealerships, it is under what roof do you have different competing cars.

SEN. SHEA asked the sponsor if he was amenable to the amendments as presented by **Mr. Williams and Mr. Gilbert** concerning the cost of bonding? **SEN. THOMAS** answered that they were willing to do as the committee sees best.

SEN. MCCARTHY asked **Steve Turkiewicz, MT Auto Dealers Assoc.,** to address the amendments of **Ms. Jamison.** He tried to address the amendments, but it was not a good try as it was the first time he had seen the amendments. He then went on to give some examples from his past. He did say that he would take some time and go over the amendments for further comments.

SEN. BENEDICT asked about page 16, section C, lines 22-25. He said that he tended to agree with **Ms. Jamison** on this. If you look at the language which says, "impose unreasonable restrictions on the assertion of legal or equitable rights", you can't impose unreasonable restrictions on the assertion of legal or equitable rights anyway. **Ms. Brenda Nordlund, Dept. of Justice** answered that you can negotiate whatever you like but the Legislature can only do that which does not impair contracts under the Constitutional provision referred to by **Ms. Jamison.** She could not tell how this would be interpreted or whether or not you could impose unreasonable restrictions on the assertion of legal or equitable rights because those are generally defined elsewhere. **Mr. Harrison** also responded to the same question. He said that one thing that is written into the contracts is CSI--market performance, service performance, those things are written in and they are expected of the dealers and they are entirely subjective. He didn't deal with PR people like those who are here today. He deals with the lawyers and fights in the trenches on these things and he feels that they are not nice people. We are talking about real fights. We are in the 9th Circuit now on two cases of dealer terminations in Butte by Ford and Chrysler and these people don't pay attention to these laws no matter what they say here. But getting to the point, CSI says you have to be within the upper 2/3% in the area of concern. He tells them do they mean that 1/3 of the people cannot possibly be in the upper 2/3's, that there is cause to terminate at every opportunity at least 1/3 of the dealers. And the answer to that is yes. He thinks that this is an example of unreasonable restriction.

SEN. CASEY EMERSON stated that he was pleased to hear about contracts and contract rights under the Constitution. He thinks that this needs to be hit quite often so that all remember this.

SEN. JOHN HERTEL asked if the opponents were testifying that the successorship in dealerships were taken care of in the bill? **Mr. Billion** stated that in the new contract that General Motors sent out six months ago, some dealers had their sons listed as heirs but GM took the sons off and said that they would not approve the sons. They want to have the ability to approve who runs the dealership, but this bill tries to say that if we have a son or relative, we want them to be able to run the dealership. But they have unilaterally said they are not going to just approve your son and they will talk about it later on. But he wants, in this bill, to say that he can give the dealership to the son if he wants with or without their approval.

{Tape: 2; Side: B; Approx. Time Count: 11:36 AM; Comments: N/A.}

SEN. WILLIAM CRISMORE asked **Ms. Jamison** to explain the successorship. **Ms. Jamison** asked the committee to go to page 9 of the bill and begin with the language 61-4-133 on line 15; there is a change from 60 to 90 days. That is why she did not testify on this. They worked on this area in a manner of compromise. This is no longer before you as an issue. Your question to Mr. Billion was, "Is this settled in the bill?" And the response wasn't on the bill, it was on some incidences. As to the question, there is compromise there. They have not stood up on that section. Would you look at Section 7 right below it. Line 27 and 28, that is again compromise. On page 10, it is the adjudication which is the appeals process. The length of the process has nothing to do with who may succeed or who may not succeed. We are not contesting those statutes. The bill speaks to that on its face.

SEN. HERTEL stated that dealers in his area had received letters as stated above and felt threatened. He would like to know what the intention of the letter is. What determines good sales? **Mr. Blankenship** stated that the letter was from General Motors, but good sales generally reflect on the market penetration that the manufacturer expects to get from a dealer. If the market penetration is good, as compared to other dealers of similar size and situation in the district, then those are good sales.

SEN. HERTEL asked **Ms. Jamison** that if the dealers have the contracts and are able to make judgments on whether to sign or not and if they decide they don't like the contract, what recourse do they have? **Ms. Jamison** said that she feels the dealers are anxious to sign those contracts because maybe someone else would move in and want to take one of those dealerships. But before you get to actual execution of the contract, you have just heard their position that there is unfair bargaining power. We tell them, contact your attorney, they may be hardnosed or they may be nice people like I am.

Closing by Sponsor:

SEN. THOMAS closed. If you are going to lose, you must confuse. We talked about success for business. I think to draw that to a conclusion, and to eliminate the confusion, this is a negotiated element. It is being changed in the bill, but it is okay. It may not be one of the parts that the manufacturers agree with but it is still a proposed change in law. It is supported by the party. On page 16, there is a phrase, "after accepting the order" then that goes forward. Companies must accept the order for that to kick in. If they don't accept the order, then obviously they don't have that situation. The appeal process was addressed. If they come in and close your dealership, you can appeal. Yes, it could be appealed to all levels of our system, but if you aren't fed vehicles to sell what are you going to have left if you win? You might as well throw in the towel. In 1975, there were 295 dealerships in Montana. Today there are 135, less than half. We talk about regulation and contract language, etc. protectionism of a monopoly. You know what a monopoly is. We regulate such as Montana Power Co. You know what a semi-competitive market is. And in that middle close to monopoly is an oligarchy. An oligarchy is where there are a few that control the market, and if this isn't an oligarchy controlling the market in Montana I don't know what is. This is why this bill is in front of you is because there aren't markets to go to. We are asking you to bring some reason into the picture.

NEWSPAPER

Automotive News

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 7
DATE 2-18-97
BILL NO. SB 343

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news

Canadian sales up again

TORONTO — Canadian vehicle sales in September improved for the second straight month, but this time by less than 1 percent.

Big 3 sales gained almost 6 percent, but imports lagged by almost 15 percent, according to preliminary figures. A total of 98,207 cars and light trucks were sold, up 0.6 percent from September 1994. In August, Canadian sales rose 6.9 percent for the first gain all year.

Automakers improved a

GM to revise dualing mix

Zarrella would link Pontiac-Buick-GMC

CHARLES CHILD
Staff Reporter

General Motors marketing czar Ron Zarrella intends to skirt the six marketing divisions with a 40-person task force to reduce GM's swollen dealership ranks and enforce new rules for dualed dealerships.

The group will tackle a huge and daunting task that has stymied GM for years. Starting around Nov. 1 in GM's North American Operations, the task force plans to:

- Enforce dualing patterns. For decades, GM has allowed its dealers to combine haphazardly. Zarrella's task force will enforce two main combinations in large markets: Buick, Pontiac and GMC Truck; Oldsmobile and Cadillac. Oldsmobile may combine with Chevrolet if Cadillac is not in the immediate area. Saturn is exempted.
- Cut the number of dealerships about 20 percent from the current total of about 8,400 for the six divisions, to about 6,700. GM's dealerships, with limited territories, compete against each other.

Many are not strong enough to modernize and provide good ser-

- Pressure GM dealers to separate their GM dealerships from their import car dealerships.
- Prod dealers to relocate to thriving retail districts, typically on suburban fringes and away from older cities and suburbs.

The GM board of directors has promised Zarrella the money needed to implement the plan, according to three well-placed GM marketing sources.

Zarrella already has explained the plan to high-ranking GM dealer officials. The plan was confirmed to *Automotive News* last week by two well-placed sources at General Motors, one at North American Operations and another at a marketing division.

see GM, 8

Punch list

Goals of Ron Zarrella's task force:

1. Chop about 20 percent of GM's 8,400 dealerships.
2. Enforce the following combinations where necessary in metro areas: Buick-Pontiac-GMC Truck; and Cadillac-Oldsmobile.
3. Move import cars out of GM dealerships.
4. Relocate dealers to thriving retail districts.

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Ford to cut U.S. dealer total

Lincoln dealers under microscope

MARY CONNELLY
Staff Reporter

Acknowledging there are too many dealers handling its products in the U.S. market, Ford Motor Co. Chairman Alex Trotman said the company will whittle its retail sales organizations. He did not say how many outlets will be trimmed.

At Lincoln-Mercury Division, General Manager Jim O'Connor is holding one-on-one meetings with Lincoln's least-productive dealers and expects to eliminate several hundred Lincoln franchises in the next few years.

Chrysler to trim 600 dealers ➤ 4

Ford Division is working with its dealers on a market-by-market basis to gradually reduce its dealer count, with most of the consolidation anticipated in the mature markets of the Northeast and in rural areas.

General Motors, Chrysler Corp., Volvo and Mercedes-Benz also are shrinking their U.S. retail networks.

Ford Motor Co. had 5,034 car and light-truck dealerships in the United States on Jan. 1, 1996.

"I think quite likely there are too many dealers in some parts of the country," Trotman said [illegible] with *Automotive News* last week.

The company is contemplating means beyond natural attrition to thin its dealership ranks.

"Quite likely, there are too many dealers in some parts of the country"

ALEX TROTMAN
FORD MOTOR CO.

"There might be some of that — proactive — rather than just waiting for people to drop by the wayside or buy each other up," Trotman said last week.

This is new for Ford Motor Co. In February, Trotman indicated there was little likelihood Ford would follow GM and Chrysler in reducing dealerships.

Already, [illegible] begun reviewing the sales and customer-service performance of the 800 dealerships supervised by Lincoln-Mercury Division and the 800-plus

see DEALERS, 52

Chrysler wants 600 fewer dealers by 2000

JIM HENRY
Staff Reporter

Chrysler dealers are having their best financial year ever, but the automaker expects to have just 4,000 dealers by 2000.

Thomas Pappert, Chrysler Corp. vice president of sales and service, said the average Chrysler dealership is expected to record a net profit of $462,000 this year. "We tell dealers and their wives if they're planning to do anything big, do it this year, because you can afford it."

Pappert said that as dealerships consolidate, Chrysler's goal is to have only 4,000 dealers by 2000 — 1,000 in major metropolitan markets; 1,000 in secondary markets; and 2,000 in rural markets. As of August, Chrysler had about 4,600 dealers, he said.

Pappert was the keynote speaker at a conference in New York hosted by San Francisco-based Montgomery Securities. The conference featured discussions on used-car superstores, dealers going public, and publicly traded auto finance companies.

Pappert told the conference Chrysler recently announced it would not allow any owner to have more than 10 Chrysler franchises in the country, two in any metro area, or six in any one.

"If we wanted to short-circuit the franchise system, it'd be easy. One of our competitors has already done it. It's called Saturn. Our next product line, we could put a DeSoto badge on it, and merchandise it, and market it separately, free and clear of the franchise laws in any of the 44 states that have

Thomas Pappert: 10 is the limit.

them," he said, showing a trick photo of a minivan with a DeSoto logo on it.

"But we have no interest in abandoning the franchise system as it stands today." AN

Chrysler record spurs Oct. sales

E. H. Leipheimer, Butte

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 7B
DATE 2-18-97
BILL NO. SB 343

Montana Automobile Dealers Association
Retooling Montana's Vehicle Dealer Franchise Laws

Montana's franchised new car and truck industry produces in excess of $1,000,000,000 in gross revenue for our state's economy. Dealerships provide nearly 4,000 high quality jobs, with above average wages. The Montana new car and truck dealerships provide a wide range of benefits for their employees and their communities. The franchised dealers are a major source of employment, a generator of tax revenue and community support in many Montana communities.

All new car and truck dealerships exist by virtue of a franchise granted by the manufacturers. These franchise agreements are contracts written by the manufacturers but financed by the dealers. Montana's franchised new car and truck dealers are disadvantaged in these contractual agreements, because the contracts are one- sided. They are considered "contracts of adhesion" because they are mandated to the dealers and favor the manufacturer.

Like most states, Montana law provides its dealers with tools to "level the playing field" with the manufacturers in the statutes governing the sales and distribution of motor vehicles. These laws were originally passed in 1977 and have helped dealers in their business relations with manufacturers. In light of recent changes in the philosophy of the manufacturers towards their franchised dealers, a task force of the Montana Automobile Dealers Association(MADA) reviewed Montana's new vehicle franchise statutes. After a year -long study, the task force concluded amendments to the Montana motor vehicle franchise statutes are necessary. In 1996, 15 states modified their dealer franchise statutes and 19 states are considering similar changes this year. Senate Bill 343 proposes to make changes in the following areas:

Successor Rights. Dealers need to be assured that their efforts to build a viable business in order to pass that business on to their children is not unfairly restricted by the actions of the manufacturers.

Transfer of Ownership. The franchise law must provide reasonable standards for approvals and disapprovals for the transfers of ownership and protection for prospective dealers.

Availability of Products. Dealers must be assured that after making significant investments into facilities, equipment and training they can expect a reasonable supply of vehicles from the manufacturers.

Dualing: Dealers with multiple line-makes need protections from arbitrary actions by manufacturers. The manufacturers should not be able to force dealers to eliminate existing line-makes from their dealership.

Unreasonable Manufacturer's Demands. The franchise law should protect dealers from unreasonable capital and facility requirements demanded by the manufacturers.

Termination Process. The termination process must be free of arbitrary and capricious actions by the manufacturers and the dealer's investment must be treated fairly and reasonably by the manufacturers.

Amendments to the Montana motor vehicle franchise laws are necessary to restore balance, reasonableness and fairness to the relationship between Montana's franchised car and truck dealers and the manufacturers. Please help support the statutory changes necessary to give dealers the opportunity to have their investments in Montana's communities and economy be treated fairly and equitably by the manufacturers.

Support the Passage of Senate Bill 343!

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General Motors Corporation
Year 2000 Plan

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 8
DATE 2-18-97
BILL NO. SB 343

Date: 4/9/96

Dealer Firm Name:

City, State: , MT

Location Point: **BMD:** C

GM Divisions:

The plan for this market is to:

Monitor market conditions - future viability is questionable.

Based upon review of numerous factors in the marketplace and the General Motors product line Channel Strategy, the above represents the GM Dealer Network vision for your dealership. All network activities will be in compliance with the terms of the Dealer Agreement and applicable State laws and will be based on relevant market data and economic considerations.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 9
DATE 2-18-97
BILL NO. SB 343

TESTIMONY

Feb 18, 1997

Mr Chairman - Members of The Committee

My Name is Mike Grimes, I live in Helena and I own Grimes Motors A New Car Dealership - I have been A Dealer since 1981

I would like to testify in favor of Senate Bill 343

I am here primarily to address the "dualing" issue or more specifically "de-dualing".

By dualing we are not referring to a gun fight - but rather the concept of a single dealership handling more than one brand of product.

Manufacturers have recently begun major attempts to eliminate dualing because each of them feels it will give more priority to their specific product line.

In major metro markets this concept probably makes good economic sense and will probably not harm the consumer.

General Motors is the major force behind this market restructuring. GM Dealers learned of these plans on October 5, 1995 in a letter From Ron Zarrella. This letter now known as the Zarrella letter caught many dealers off guard.

Here in Helena, the new Helena Auto mall was under construction. Three dealerships representing fifteen franchises - an investment in plant and equipment of Seven Million Dollars. Without dualing this investment could not have taken place.

De-dualing will not allow dealers to make the kind of investment necessary to provide a high quality facility and service operation due to the economies of scale and cost of equipment

The GM plan has lost sight of rural America and places like

Montana that have many major market areas of less than 100,000 people.

IF dealers are forced to de-dual some will go broke and some franchises simply will not be represented in the market. This will harm consumers because they will be forced to travel hundreds of miles for warranty service. If your vehicle is broke down thats pretty difficult.

Please vote in favor of Senate Bill 343

Thank You

SENATE BUSINESS & INDUST
EXHIBIT NO. 10
DATE 2-18-97
BILL NO. SB 343

95NA0018 10/05/95

DATE: OCTOBER 5, 1995

SUBJECT: DEALER NETWORK PLANNING

TO: ALL GM DEALERS

WE WOULD LIKE TO REPORT TO YOU TODAY ON OUR PROGRESS IN IMPROVING THE COMPETITIVENESS OF GENERAL MOTORS NORTH AMERICAN OPERATIONS, AND SPECIFICALLY ON DEVELOPMENTS IN OUR DEALER NETWORK PLANNING STRATEGY, TO ASSIST YOU IN YOUR OWN BUSINESS PLANNING.

AS YOU KNOW, WE HAVE BEEN APPLYING SIGNIFICANT EFFORT AND RESOURCES TO ORE-INVENTINGO GENERAL MOTORS OVER THE PAST THREE YEARS IN ORDER TO ACHIEVE OUR PARAMOUNT GOAL OF CREATING SUSTAINABLE CUSTOMER ENTHUSIASM. FROM UNPRECEDENTED FINANCIAL LOSSES IN THE EARLY 090S, WE HAVE MOVED WELL INTO THE BLACK IN 1994. MUCH OF THIS HAS BEEN DONE BY CUTTING WASTE AND SIMPLIFYING OUR PROCESSES; WE STILL HAVE CONSIDERABLE OPPORTUNITY IN THIS AREA. ALTHOUGH PROFITS ARE NOT YET AT THE RATE WE HAVE TARGETED, THEY HAVE IMPROVED SUFFICIENTLY TO ALLOW US TO FOCUS ON STREAMLINING THE PRODUCT DEVELOPMENT PROCESS AND PROVIDE CUSTOMERS WITH CARS AND TRUCKS THAT EXCEED THEIR EXPECTATIONS. WE ARE ABSOLUTELY COMMITTED TO CONTINUING THIS PROGRESS AND TO ACHIEVING OUR GOAL OF, ON AVERAGE, BEING ABLE TO INTRODUCE A HIGH-QUALITY NEW PRODUCT EVERY MONTH BY THE END OF THE DECADE.

A MAJOR PART OF OUR PLAN TO CREATE CUSTOMER ENTHUSIASM FLOWS DIRECTLY FROM A BETTER UNDERSTANDING OF THE NEEDS AND DESIRES OF OUR MUTUAL CUSTOMERS AND A DETERMINED FOCUS ON EXCEEDING THEIR EXPECTATIONS. THE PRIMARY TOOLS FOR WINNING IN THIS AREA WILL BE BETTER DIFFERENTIATION OF OUR BRANDS AND PRODUCTS, MORE CUSTOMER-FRIENDLY PROCESSES AND ATTITUDES, AND FURTHER STRENGTHENING OF OUR DEALER NETWORKS. OUR ANALYSIS OF THE MARKET HAS MADE IT CLEAR THAT WE WILL HAVE FEWER MODELS, EACH OF WHICH WILL BE FOCUSED ON THE NEEDS AND WANTS OF SPECIFIC CUSTOMER SEGMENTS. THIS WILL REQUIRE CHANGES IN THE DEALER ENVIRONMENT TO ASSURE THE TARGET CUSTOMER IS EFFECTIVELY REACHED AND RETAINED BY EACH BRAND.

OUR GOAL IS TO ASSURE THAT SALES ARE INDIVIDUALLY MORE PROFITABLE BOTH FOR OURSELVES AND OUR DEALERS. WE PLAN TO DO THIS BY NURTURING THE SPECIFIC PRODUCTS AND IMAGES OF OUR BRANDS TO ENABLE THEM TO OFFER SUPERIOR VALUE, BY ASSURING THAT EACH BRAND IS PROPERLY PRESENTED TO THE PUBLIC, AND BY RENEWED EMPHASIS ON HAVING THE RIGHT NUMBER OF DEALERS, AT THE RIGHT LOCATIONS AND OF THE RIGHT SIZE, TO PROFITABLY MEET THE SALES AND SERVICE EXPECTATIONS OF OUR CUSTOMERS. WE HAVE SEVERAL INITIATIVES WELL UNDER WAY TO ADDRESS THE BRAND MANAGEMENT FEATURES OF OUR PLAN. AS A FIRST STEP IN THE NETWORK PLANNING ARENA, WE ARE ESTABLISHING A GENERAL MOTORS NETWORK STRATEGY WHICH BUILDS ON AND EXPANDS THE 02000 PLANO COMMUNICATED TO YOU FIVE YEARS AGO. WE PLAN TO PURSUE THE NEW STRATEGY WITH INCREASED FOCUS AND RESOURCES.

THE NEW GENERAL MOTORS NETWORK STRATEGY IS SIMPLE:

*WHEREVER THE LOCAL MARKET SALES POTENTIAL FOR THE

REFOCUSED BRAND PROVIDES AN OPPORTUNITY FOR A PROFITABLE DEALERSHIP SELLING AND SERVICING THAT BRAND ALONE, GENERAL MOTORS SHOULD HAVE A SINGLE LINE, EXCLUSIVE DEALER CONFORMING IN IMAGE AND CUSTOMER PRACTICES TO THE NORM ESTABLISHED FOR THAT BRAND.

FURTHER, GENERAL MOTORS BRANDS ARE NOT COMMODITIES AND SHOULD NEVER BE OFFERED TO THE PUBLIC FROM FACILITIES THAT ALSO OFFER COMPETING BRANDS. FOR PURPOSES OF THE NETWORK STRATEGY, WE HAVE ALSO CONCLUDED THAT PONTIAC DUALED WITH GMC TRUCK WILL BE THE PREFERRED NETWORK PATTERN RATHER THAN SINGLE LINE PONTIAC AND SINGLE LINE GMC TRUCK (EXCEPT MAJOR GMC TRUCK COMMERCIAL DEALERS WILL BE SINGLE LINE). WHERE LOCAL CONDITIONS WILL NOT SUPPORT SINGLE LINE REPRESENTATION, DUALING PATTERNS SHOULD CONFORM WITH THE FOLLOWING:

*AS A FIRST PREFERENCE, DUAL BUICK WITH PONTIAC AND GMC TRUCK. DUAL OLDSMOBILE WITH CADILLAC, OR CHEVROLET IF CADILLAC IS NOT REPRESENTED IN THE MARKET.

*IN RURAL AREAS, THE PREFERRED ARRANGEMENT IS CHEVROLET/BUICK/PONTIAC/OLDSMOBILE. CADILLAC AND GMC TRUCK WILL NOT BE REPRESENTED.

THE NEW NETWORK STRATEGY HAS BEEN REVIEWED WITH A VARIETY OF DEALERS AND DEALER REPRESENTATIVES AS IT WAS DEVELOPED, AND DEALERS WILL CONTINUE TO PROVIDE VALUABLE ADVICE AND FEEDBACK ON IMPLEMENTATION. RECOGNIZING THE VALIDITY OF CONCERNS FOR INDIVIDUAL DEALER SITUATIONS, WE HAVE BEEN PLEASED BY THE CONCEPTUAL ENDORSEMENTS RECEIVED FROM ALL PARTIES. WE ARE IN THE PROCESS OF COMPLETING OUR THINKING ON PROCESS CHANGES AT THE CAR AND TRUCK DIVISIONS TO BEST IMPLEMENT OUR NEW NETWORK STRATEGY. WE ARE ALSO CONDUCTING A COMPLETE REVIEW OF THE O2000 PLANO TO IDENTIFY NECESSARY CHANGES TO CONFORM TO THE ENHANCED STRATEGY. BOTH OF THESE ACTIVITIES SHOULD BE COMPLETED IN EARLY 1996 AND WILL BE REPORTED TO YOU.

A WORD ABOUT THE TRANSITION FROM THE CURRENT DEALER NETWORK TO THE NEW VISION: GENERAL MOTORS ABSOLUTELY COMMITS TO DEAL FAIRLY AND EQUITABLY WITH EACH OF ITS DEALERS. SOME OF THE NECESSARY CHANGES WILL PROVOKE CONCERN AND EMOTION, AND SOME WILL TAKE LONGER TO ACHIEVE THAN OTHERS. EVERYONE RECOGNIZES THE IMPLEMENTATION OF THIS STRATEGY IS A MAJOR TASK. WE ARE CONVINCED THAT THE NEW STRATEGY IS CLEARLY IN THE BEST INTERESTS OF OUR DEALERS AS A GROUP--INDEED, MANY HAVE INDIVIDUALLY TOLD US SO--AND THAT IT CAN BE IMPLEMENTED OVER TIME WITH A MINIMUM OF DISLOCATION AND FRICTION.

THANK YOU FOR YOUR ATTENTION TO THIS IMPORTANT SUBJECT; AND CONGRATULATIONS ON THE SALES JOB THIS YEAR!

R. L. ZARRELLA

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 11
DATE 2-18-97
BILL NO. SB 343

Amendments to Senate Bill No. 343
First Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
February 17, 1997

1. Page 9, line 4.
Following: "property"
Insert: ", provided the designated family member meets the current criteria generally applied by the manufacturer in qualifying new motor vehicle dealers"

2. Page 10, line 3.
Following: "final"
Insert: "determination of the issues raised in the complaint"

3. Page 10, line 4 through 7.
Strike: "adjudication" on line 4 through "process" on line 7

4. Page 14, lines 11 through 14.
Strike: subsection (9) in its entirety

5. Page 16, lines 1 through 3.
Strike: "change" on line 1 through "expansion;" on line 3
Insert: "adopt, change, establish, or implement a plan or system for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its motor vehicle dealers that is not fair, reasonable, and equitable and upon the request of a dealer franchised by it, a manufacturer may not fail or refuse to disclose in writing to the dealer the basis upon which new motor vehicles, parts, and accessories are allocated, scheduled, and delivered among the manufacturer's, importer's, or distributors dealers of the same line-make; or"

6. Page 16, line 4 through 10.
Strike: subsections (iv) and (v) in their entirety
Renumber: subsequent subsections

7. Page 16, line 18.
Strike: ";"
Insert: "."

8. Page 16, lines 19 through 27.
Strike: "(b)" on line 19 through "entity" on line 27
Insert: "(2) The fact that the motor vehicle franchisee owns, has an investment in, participates in the management of, or holds a franchise agreement for, the sale or service of another make or line of new motor vehicles, or the motor vehicle dealer has established another make or line of new motor vehicle franchisor prior to May 1, 1997, or such establishment is approved in writing by the motor vehicle franchisor. The approval must be requested in writing by

the franchisee and the franchisor must approve or disapprove the request in writing within 60 days of receipt of the request."

MONTANA SENATE
1997 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL DATE 2-18-97

NAME	PRESENT	ABSENT	EXCUSED
WILLIAM CRISMORE	X		
CASEY EMERSON	X		
BEA MC CARTHY	X		
DEBBIE SHEA	X		
STEVE BENEDICT, VICE CHAIRMAN	X		
JOHN HERTEL, CHAIRMAN	X		

SEN:1997
wp.rollcall.man
CS-09

DATE 2-18-97

SENATE COMMITTEE ON Bus. & Ind.

BILLS BEING HEARD TODAY: SB 343; SB 347
SB 348

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Jim Brown	Bldg Codes Company	SB 347		X
Tim Bergstrom	MT State Firemen's Assoc	SB 347	X	
Dave Isaacson	MT Board of Barber		X	
Dean Roberts	Dept of Justice, MVD	SB 343	X	
Charles R. Brooks	Billings Chamber	SB 343	X	
Bud Withams	Mt. Assoc of Manufactured Home RV Dealers	SB 343	X	
[illegible]	D.O.R	SB 348		X
Pam Langley	Montana AgriBusiness Assn Montana Grain Elevators Assn	SB 348		X
Fritz Zettel	CITY OF HELENA FIRE DEPT	SB 347		X
Bob Gilbert	MT Tow Truck Assoc. M.A.D.R.A.	SB 343	W/ AMD	
Calvin Eleby	American Automobile MFG Assn	343		X
Steve Blankenship	Ford	343		X
Loretta Miller	MADRA	343	W/ AMD	
Mona Jamison	American Auto Manufacturers Assoc	343		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 2-18-97

SENATE COMMITTEE ON Sen. Bus + Lab

BILLS BEING HEARD TODAY: SB 343; SB 347

SB 348

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
DAVE BROWN	Mt. Independent Retailers Assn	SB-343	✓ w/ Amdt	
Brenda Nordlund	Mont Dept of Justice	SB343	✓	
Steve Turkiewicz	Mt. Auto Dealers Assn	SB343	✓	
Mike Grimes	Grimes Motors	SB343	✓	
JOE BILLION	J.C. Billion Inc	SB 343	✓	
ANDY POOLE	DEPT OF COMMERCE	SB343		✓
E.G. Leipheimer III	Discovery Bank	SB343	✓	
Paul Owen	mt chamber	SB343	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 20, 1997, at 8:00 A.M., in ROOM 410.

ROLL CALL

Members Present:
Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 376; SB 378; 2/17/97
	SB 381; 2/18/97
Executive Action:	SB 343; HB 131;
	SB 347 TABLED

{Tape: 1; Side: A; Approx. Time Count: 8:06 AM; Comments: N/A.}

EXECUTIVE ACTION ON SB 343

Motion: **SEN. DEBBIE SHEA MOVED DO PASS SB 343.**

Amendments: **SEN. CASEY EMERSON MOVED to Amend SB 343 (EXHIBIT 1) sb034303.abc.**

Discussion: **Ms. Mona Jamison, American Automobile Manufacturing Assoc.** was asked to explain the amendment. **Mr. Tom Harrison, Helena Attorney for car dealers,** was also asked to give his view of the amendment. (The same four amendments that are being presented were spoken on at great length yesterday 1/19/97.)

SEN. EMERSON asked if there could possibly be any middle ground. **Mr. Harrison** said that there could be no compromise. **Ms. Jamison** offered a compromise that seemed to be acceptable to **Mr. Harrison. Mr. Bart Campbell** responded that the idea was very conceptual and to fashion an amendment that would stand the scrutiny of the courts would be quite difficult. **SEN. STEVE BENEDICT** suggested that the parties should try to come to a compromise after the bill goes to the House Business and Labor Committee.

Vote: **The motion to AMEND SB 343 FAILED UNANIMOUSLY: 0-6**

Amendments: **SEN. CASEY EMERSON MOVED TO Amend SB 343 (EXHIBIT 2) sb034304.abc.**

Discussion: **Mr. Campbell** explained the amendment.

Vote: **The motion to AMEND SB 343 FAILED UNANIMOUSLY: 0-6**

Amendments: **SEN. EMERSON MOVED TO Amend SB 343 (EXHIBIT 3) sb034305.abc.**

Discussion: **Mr. Campbell** explained the amendment. **SEN. CRISMORE** asked if there could be any compromise on this issue. **Ms. Jamison** said that they had offered a compromise and that was there would be no change in dualing for a dealer that has it already in place but that in the future, there would have to be a mutual consent. This had not been acceptable to the dealers. **Mr. Harrison** stated that there is no middle ground.

Vote: **The motion to AMEND SB 343 FAILED with SENATOR CRISMORE voting YES: 1-5.**

Amendments: **SEN. EMERSON MOVED TO Amend SB 343 (EXHIBIT 4) sb034306.abc.**

Discussion: **SEN. BENEDICT** asked **Mr. Harrison** if he had prepared any amendment that addressed this issue? **Mr. Harrison** said that he saw no middle ground. **Ms. Jamison** stated that this is against the Constitution. If the bill is not amended, it allows the dealers to break any contract they sign if they decide that it is unreasonable or for whatever other reason they want. The bill as it is written is UNFAIR. **SEN. EMERSON** wanted to ask that the two sides get together and see if they could come to a compromise for the House Business & Labor Committee. **Ms. Jamison** stated that not to accept this amendment is bad lawmaking and urged the committee to take that responsibility. And further, the proponents have gotten their way with the other amendments but this amendment cuts to the heart of the problem. The law should try to reach a balance in fairness.

Vote: **The motion to AMEND SB 343 FAILED with SENATOR CRISMORE**

Amendments: **SEN. CRISMORE MOVED TO Amend SB 343 (EXHIBIT 5) sb034307.abc.**

Discussion: **Mr. Bart Campbell** explained the amendments. The amendments were simple. **SEN. EMERSON** asked how long has the $25,000 bond been in effect? **Mr. Steve Turkiewicz, MT Auto Dealers Assoc.** said that the change was four years ago, from $10,000 to $25,000.

Vote: **The motion to AMEND SB 343 CARRIED UNANIMOUSLY: 6-0**

Motion/Vote: **SEN. BENEDICT MOVED DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY: 6-0.**

{Tape: 1; Side: A; Approx. Time Count: 8:41 AM; Comments: N/A.}

EXECUTIVE ACTION ON HB 131

Motion: **SEN. CRISMORE MOVED HB 131 BE CONCURRED IN.**

Amendments: **SEN. CRISMORE MOVED to Amend HB 131 (EXHIBIT 6), hb013101.abc.**

Discussion: **Mr. Campbell** explained that **Frank Cote and Ward Shanahan** had gotten with him and showed him where they were in agreement. The amendments were put together from this meeting. **Mr. Campbell's** understanding from **Mr. Cote** was that he and **Mr. Shanahan** were in agreement.

Vote: **The motion to AMEND HB 131 CARRIED UNANIMOUSLY: 6-0.**

Motion/Vote: **SEN. CRISMORE MOVED HB 131 BE CONCURRED IN AS AMENDED. The motion CARRIED with SENATOR EMERSON voting NO: 5-1.**

EXECUTIVE ACTION ON SB 347

Motion: **SEN. CRISMORE MOVED DO PASS SB 347.**

Amendments: **SEN. CRISMORE MOVED to Amend SB 347 (EXHIBIT 7) sb034701.asm.**

Discussion: **Mr. Campbell** explained the amendments that were prepared by Stephen Maly. **SEN. MCCARTHY** felt that the amendments changed the tenor of the bill. **SEN. EMERSON** asked if the fire marshall had been dropped as to getting into the decision making concerning elevator power shut down circuits. **Mr. Campbell** said no because subsection (3) strikes that idea. **SEN. EMERSON** thought that the Department of Commerce could put some of this

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 2-20-97
BILL NO. SB 343

Amendments to Senate Bill No. 343
First Reading Copy

Requested by Senator Emerson
For the Committee on Business and Industry

Prepared by Bart Campbell
February 19, 1997

1. Page 10, lines 4 through 7.
Strike: "adjudication" on line 4 through "process" on line 7
Insert: "determination of the issues raised in the complaint"

2. Page 14, lines 11 through 14.
Strike: subsection (9) in its entirety

Failed

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 2-20-97
BILL NO. S B 343

Amendments to Senate Bill No. 343
First Reading Copy

Requested by Senator Emerson
For the Committee on Business and Industry

Prepared by Bart Campbell
February 19, 1997

1. Page 16, lines 1 through 10.
Strike: "change" on line 1 through "; or" on line 10
Insert: "adopt, change, establish, or implement a plan or system for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its motor vehicle dealers that is not fair, reasonable, and equitable. Upon the request of a dealer franchised by it, a manufacturer may not fail or refuse to disclose in writing to the dealer the basis upon which new motor vehicles, parts, and accessories are allocated, scheduled, and delivered among the manufacturer's, importer's, or distributor's dealers of the same line-make."

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 2-20-97
BILL NO. SB 343

Amendments to Senate Bill No. 343
First Reading Copy

Requested by Senator Emerson
For the Committee on Business and Industry

Prepared by Bart Campbell
February 19, 1997

1. Page 15, line 25.
Strike: ":"

2. Page 15, line 26.
Strike: "(a)"

3. Page 15, line 27.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsections

4. Page 16, line 13.
Strike: "(A)"
Insert: "(i)"
Renumber: subsequent subsection

5. Page 16, line 18.
Strike: ";"
Insert: "."

6. Page 16, lines 19 through 27.
Strike: "(b)" on line 19 through "entities." on line 27
Insert: "(2) If prior to May 1, 1997, a motor vehicle franchisee owns, has an investment in, participates in the management of, or holds a franchise agreement for the sale or service of another make or line of new motor vehicles or if the franchisee has established another make or line of new motor vehicle franchise prior to May 1, 1997, the franchisee may sell those makes or lines of new motor vehicles. On or after May 1, 1997, the franchisee shall request approval to sell another make or line of new motor vehicles in writing and the franchisor shall approve or disapprove the request in writing within 60 days of receipt of the request."

Failed 1 yea 6 nay

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 2-20-97
BILL NO. SB 343

Amendments to Senate Bill No. 343
First Reading Copy

Requested by Senator Emerson
For the Committee on Business and Industry

Prepared by Bart Campbell
February 19, 1997

1. Page 16, line 18.
Following: ";"
Insert: "or"

2. Page 16, line 21.
Following: "delivery"
Strike: "; or"
Insert: "."

3. Page 16, lines 22 through 25.
Strike: subsection (c) in its entirety

Mailed by Chairman

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 2-20-97
BILL NO. SB 343

Amendments to Senate Bill No. 343
First Reading Copy

Requested by Senator Thomas
For the Committee on Business and Industry

Prepared by Bart Campbell
February 19, 1997

1. Page 3, lines 26 and 28.
Strike: "$50,000"
Insert: "$25,000"

2. Page 6, line 2.
Strike: "$50,000"
Insert: "$25,000"

3. Page 8, line 22.
Strike: "vehicles covered by"

MONTANA SENATE
1997 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL DATE 2-20-97

NAME	PRESENT	ABSENT	EXCUSED
WILLIAM CRISMORE	X		
CASEY EMERSON	X		
BEA MC CARTHY	X		
DEBBIE SHEA	X		
STEVE BENEDICT, VICE CHAIRMAN	X		
JOHN HERTEL, CHAIRMAN	X		

SEN:1997
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

February 20, 1997

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill 343 (first reading copy -- white), respectfully report that Senate Bill 343 be amended as follows and as so amended do pass.

Signed: John Hertel
Senator John R. Hertel, Chair

That such amendments read:

1. Page 3, lines 26 and 28.
Strike: "$50,000"
Insert: "$25,000"

2. Page 6, line 2.
Strike: "$50,000"
Insert: "$25,000"

3. Page 8, line 22.
Strike: "vehicles covered by"

-END-

TS 2/21 Amd. Coord.
Sec. of Senate

401548SC.STS

HOUSE TRANSPORTATION

BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ------- REREFERRED ---- DATE READ

SB0252	LYNCH, J. D.		REVISE ABANDONED VEHICLE REMOVAL					
	2/21	3/14		CONCUR	03/24	VOTE: 14-2		
SB0257	DEPRATU, BOB		REVISING DISPOSITION OF GASOLINE TAXES					
	2/22	3/10		CONCUR	03/24	VOTE: 16-0		
SB0265	THOMAS, FRED		REVISING CONSTRUCTION STANDARDS FOR RECREATIONAL VEHICLES					
	2/21	3/14		CONCUR	03/24	VOTE: 16-0		
SB0282	LYNCH, J. D.		ALLOWING CHIROPRACTORS TO CERTIFY DISABLED PARKING PERMITS					
	2/15	3/14		CONCUR	03/24	VOTE: 16-1		
SB0335	JENKINS, LOREN		FARM IMPLEMENTS WITHOUT PILOT CAR ON COUNTY ROADS					
	3/03	3/21		CONCUR	03/24	VOTE: 12-5		
SB0343	THOMAS, FRED		REVISE SALE AND DISTRIBUTION OF MOTOR VEHICLES					
	3/03	3/14		CONCUR	03/21	VOTE: 12-2		
SB0360	CRIPPEN, BRUCE		REVISE SPEED LIMIT LAWS					
	3/03	3/21		TABLED ON	03/24	VOTE: 12-6		
SJ0009	STANG, BARRY		RESOLUTION URGING CONGRESS TO REAUTHORIZE THE FEDERAL SURFACE TRANSPORTATION					
	2/21	3/21		CONCUR	03/24	VOTE: 16-0		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TRANSPORTATION

Call to Order: By Vice Chairman Rick Jore, on March 14, 1997, at 3:15, in Room 420.

ROLL CALL

Members Present:

Rep. Rick Jore, Vice Chairman (Majority) (R)
Rep. Patrick G. Galvin, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Marian W. Hanson (R)
Rep. Rod Marshall (R)
Rep. Dorothy C. Simpson (D)
Rep. Jack Wells (R)
Rep. Bill Whitehead (D)

Members Excused: Rep. Shiell Anderson
Rep. Matt Brainard
Rep. Bob Clark
Rep. Sonny Hanson
Rep. Gerald Pease
Rep. Bill Ryan

Staff Present: Leanne Kurtz, Legislative Services Division
Mary Lou Schmitz, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 265 - 3-11-97
SB 252 - 3-11-97
SB 282 - 3-11-97
SB 343 - 3-11-97

HEARING ON SB 282

"AN ACT ALLOWING A LICENSED CHIROPRACTOR TO CERTIFY AN APPLICATION FOR A SPECIAL PARKING PERMIT FOR THE DISABLED";

Sponsor: Senator J. D. Lynch, SD 19.

{Tape: 1; Side: A; Approx. Time Count: 5.5 ; }
Opening Statement by Sponsor: Senator Lynch said the Bill is a consumer-choice Bill. It allows licensed chiropractors the same

{Tape: 1; Side: A; Approx. Time Count: 29.8; }
Opponents: None

{Tape: 1; Side: A; Approx. Time Count: 30.0; }
Informational Testimony: Rep. Larry Grinde, HD 94.

{Tape: 1; Side: A; Approx. Time Count: 33.9; }
Questions From Committee Members and Responses: Reps. Marshall, Simpson.

Responses by Bob Gilbert; Senator Lynch;

Closing by Sponsor: Senator Lynch closed the Hearing on SB 252.

HEARING ON SB 265

"AN ACT REVISING THE LAWS RELATING TO CONSTRUCTION STANDARDS FOR RECREATIONAL VEHICLES; ELIMINATING THE RESPONSIBILITY OF THE DEPARTMENT OF COMMERCE FOR ADOPTING CONSTRUCTION STANDARDS FOR RECREATIONAL VEHICLES; ADOPTING THE AMERICAN NATIONAL STANDARDS INSTITUTE CONSTRUCTION STANDARD FOR RECREATIONAL VEHICLES;"

Sponsor: Senator Fred Thomas, SD 31.

{Tape: 1; Side: A; Approx. Time Count: 43.1; }
Opening Statement by Sponsor: Senator Thomas reviewed the Bill described in the Title above.

{Tape: 1; Side: A; Approx. Time Count: 46.0; }
Proponents: Bruce Aafedt, President, Montana Manufactured Housing and RV Association. **EXHIBIT 3.**

Stuart Doggett, Montana Manufactured Housing and RV Association.

Jim Brown, Bureau Chief, Building Codes, Department of Commerce.

Opponents: None

Informational Testimony: None

{Tape: 1; Side: A; Approx. Time Count: 55.2; }
Questions From Committee Members and Responses: Reps. Bitney, Barnett, Galvin, Simpson.

Responses by Jim Brown; Stuart Doggett; Senator Thomas.

Closing by Sponsor: Senator Thomas closed the Hearing on SB 265.

HEARING ON SB 343

"AN ACT REVISING AND CLARIFYING LAWS GOVERNING MOTOR VEHICLE DEALERS, MANUFACTURERS; AND DISTRIBUTORS;"

Sponsor: Senator Fred Thomas, SD 31.

Opening Statement by Sponsor: Senator Thomas said this Bill finds its roots in two bills introduced in the 1977 Legislature and first heard in a Senate Committee 20 years ago concerning the dual laws. **EXHIBIT 4.**

{Tape: 1; Side: A; Approx. Time Count: 75.0; }
Proponents: E. G. Leipheimer, Discovery Buick, Anaconda and President, Montana Automobile Dealers' Association. **EXHIBIT 5.**

Tom Walker, 4 Seasons Motors, Missoula, Montana. **EXHIBIT 6.**

Jim Utterback, Montana Automobile Dealers' Association.

{Tape: 1; Side: A and B; Approx. Time Count: 88.3 and 0.1; }
Tom Harrison, Attorney, Montana Automobile Dealers' Association. **EXHIBIT 7.**

Dean Roberts, Administrator, Motor Vehicle Division, Department of Justice.

David Owen, Montana Chamber of Commerce.

Bud Williams, Montana Manufactured Housing Association.

Dave Brown, Montana Independent Automobile Dealers Association.

Bob Gilbert, Montana Tow Truck Association.

{Tape: 1; Side: B; Approx. Time Count: 10.2; }
Opponents: Mona Jamison, Lobbyist, General Motors, Chrysler and Ford Motor Company. **EXHIBIT 8, EXHIBIT 9, EXHIBIT 10.**

Bob Zobrist, Ford Motor Company, Seattle Region.

Calvin Eleby, Jr. American Automobile Manufacturer's Association.

Informational Testimony: None

{Tape: 1; Side: B; Approx. Time Count: 40.3; }
Questions From Committee Members and Responses: Reps. Marshall, Galvin, Bitney, Barnett, Bookout, Simpson, Whitehead, Wells, Marian Hanson.

Responses by Tom Harrison; Mona Jamison; Bob Zobrist; Calvin Eleby;

{Tape: 1; Side: B; Approx. Time Count: 73.8 - 79.5; }
Closing by Sponsor: Senator Thomas closed the Hearing on SB 343.

NEWSPAPER

Automotive News

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EXHIBIT SE 4 3-14-97 343

news

Canadian sales up again

TORONTO — Canadian vehicle sales in September improved for the second straight month, but this time by less than 1 percent, by [illegible]

Big 3 sales gained almost 5 percent, but imports sagged by almost 15 percent, according to preliminary figures. A total of 98,207 cars and light trucks were sold, up 0.6 percent from September 1994. In August, Canadian [illegible] sales rose 5.9 percent for the first gain all year. [illegible] improved 2.2

GM to revise dualing mix

Zarrella would link Pontiac-Buick-GMC

CHARLES CHILD
Staff Reporter

General Motors marketing czar Ron Zarrella intends to skirt the six marketing divisions with a 40-person task force to reduce GM's swollen dealership ranks and enforce new rules for dualed dealerships.

The group will tackle a huge and daunting task that has stymied GM for years. Starting around Nov. 1 in GM's North American Operations, the task force plans to:

■ Enforce dualing patterns. For decades, GM has allowed its dealers to combine haphazardly. Zarrella's task force will enforce two main combinations in large markets: Buick, Pontiac and GMC Truck; Oldsmobile and Cadillac. Oldsmobile may combine with Chevrolet if Cadillac is not in the immediate area. Saturn is excluded.

■ Cut the number of dealerships about 20 percent from the current total of about 8,400 for the six divisions, to about 6,700. GM's dealerships, with limited territories, compete against each other.

Many are not strong enough to modernize and provide good service.

■ Pressure GM dealers to separate their GM dealerships from their import car dealerships.

■ Prod dealers to relocate to thriving retail districts, typically on suburban fringes and away from older cities and suburbs.

The GM board of directors has promised Zarrella the money needed to implement the plan, according to three well-placed GM marketing sources.

Zarrella already has explained the plan to high-ranking GM dealer officials. The plan was confirmed to *Automotive News* last week by two well-placed sources at General Motors, one at North American Operations and another at a marketing division.

see GM, 8

Punch list

Goals of Ron Zarrella's task force:

1. Chop about 20 percent of GM's 8,400 dealerships.
2. Enforce the following combinations where necessary in metro areas: Buick-Pontiac-GMC Truck; and Cadillac-Oldsmobile.
3. Move import cars out of GM dealerships.
4. Relocate dealers to thriving retail districts.

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Ford to cut U.S. dealer total

Lincoln dealers under microscope

MARY CONNELLY
Staff Reporter

Acknowledging there are too many dealers handling its products in the U.S. market, Ford Motor Co. Chairman Alex Trotman said the company will whittle its retail sales organizations. He did not say how many outlets will be trimmed.

At Lincoln-Mercury Division, General Manager Jim O'Connor is holding one-on-one meetings with Lincoln's least-productive dealers and expects to eliminate several hundred Lincoln franchises in the next few years.

Chrysler to trim 600 dealers ➤ 4

Ford Division is working with its dealers on a market-by-market basis to gradually reduce its dealer count, with most of the consolidation anticipated in the mature markets of the Northeast and in rural areas.

General Motors, Chrysler Corp., Volvo and Mercedes-Benz also are shrinking their U.S. retail networks.

Ford Motor Co. had 5,034 car and light-truck dealerships in the United States on Jan. 1, 1996.

"I think quite likely there are too many dealers in some parts of the country," Trotman said [illegible] with *Automotive News* last week.

The company is contemplating means beyond natural attrition to thin its dealership ranks.

"Quite likely, there are too many dealers in some parts of the country"

ALEX TROTMAN
FORD MOTOR CO.

"There might be some of that — proactive — rather than just waiting for people to drop by the wayside or buy each other up," Trotman said last week.

This is new for Ford Motor Co. In February, Trotman indicated there was little likelihood Ford would follow GM and Chrysler in reducing dealerships.

Already, [illegible] begun reviewing the sales and customer-service performance of the 806 dealerships supervised by Lincoln-Mercury Division and the 800-plus

see DEALERS, 52

Chrysler wants 600 fewer dealers by 2000

JIM HENRY
Staff Reporter

Chrysler dealers are having their best financial year ever, but the automaker expects to have just 4,000 dealers by 2000.

Thomas Pappert, Chrysler Corp. vice president of sales and service, said the average Chrysler dealership is expected to record a net profit of $462,000 this year. "We tell dealers and their wives if they're planning to do anything big, do it this year, because you can afford it."

Pappert said that as dealerships consolidate, Chrysler's goal is to have only 4,000 dealers by 2000 — 1,000 in major metropolitan markets; 1,000 in secondary markets; and 2,000 in rural markets. As of August, Chrysler had about 4,600 dealers, he said.

Pappert was the keynote speaker at a conference in New York hosted by San Francisco-based Montgomery Securities. The conference featured discussions on used-car superstores, dealers going public, and publicly traded auto finance companies.

Pappert told the conference Chrysler recently announced it would not allow any owner to have more than 10 Chrysler franchises in the country, two in any metro area, or six in any zone.

"If we wanted to short-circuit the franchise system, it'd be easy. One of our competitors has already done it. It's called Saturn. Our next product line, we could put a DeSoto badge on it, and merchandise it, and market it separately, free and clear of the franchise laws in any of the 44 states that have them," he said, showing a trick photo of a minivan with a DeSoto logo on it.

Thomas Pappert: 10 is the limit.

"But we have no interest in abandoning the franchise system as it stands today." AN

Chrysler record spurs Oct. sales

EXHIBIT 5
DATE 3-14-95
SB 343

GMC TRUCK. **Bob Muiter**

September 21, 1995

RE: Dealer Sales and Service Agreement

Dear

We have taken the liberty of generating a new (revised) Dealer Agreement as the returned agreement had GM PROSPEC deleted.

The provisions of the Dealer Agreement cannot be amended and/or customized by dealer point. The provisions of the Dealer Agreement require 100% compliance by all GMC Truck dealers.

Thank you in advance for you understanding. We anxiously await your execution and return of the attached documents.

Sincerely,

Bob Muiter
Zone Manager

Attachment(s)

General Motors Corporation
Year 2000 Plan

EXHIBIT 6
DATE 3-14-97
SB 343

Date: 4/9/96

Dealer Firm Name: [redacted]

City, State: [redacted], MT

Location Point: [redacted] **BMD:** C

GM Divisions: Chevrolet, Oldsmobile

The plan for this market is to:

Monitor market conditions - future viability is questionable.

Based upon review of numerous factors in the marketplace and the General Motors product line Channel Strategy, the above represents the GM Dealer Network vision for your dealership. All network activities will be in compliance with the terms of the Dealer Agreement and applicable State laws and will be based on relevant market data and economic considerations.

EXHIBIT 7
DATE 3-14-97
SB 343
C-P-D

Exhibit # 7 (17 pages)
Copy of dealer agreement

The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

Chrysler Corporation

CHRYSLER CORPORATION

SALES AND SERVICE AGREEMENT

ADDITIONAL TERMS AND PROVISIONS

FORM 91 (C-P-D)

EXHIBIT 8
DATE 3-14-97
SB 343

Amendments to Senate Bill No. 343
Second Reading Copy

For The House Transportation Committee
March 14, 1997

1. Page 16, lines 8 through 10
Following: "(v)" on line 8
Strike: "refrain" on line 8 through ";or" on line 11
Insert: "refrain from participation in the management of investment in or acquisition of any other line-make of new motor vehicle or related products unless justified by reasonable business considerations."

2. Page 16, line 19
Following: ";"
Insert: "or"

3. Page 16, line 22
Following: "delivery"
Strike: ";or"
Insert: "."

4. Page 16, lines 23 through 26
Strike: subsection © in its entirety

5. Page 10, lines 4 through 7
Strike: "adjudication" on line 5 through "process" on line 8
Insert: "determination of the issues raised in the complaint."

6. Page 14, lines 12 through 15
Strike: subsection (9) in its entirety

EXHIBIT 9
DATE 3-14-97
SB 343

March 13, 1997

Regional Governmental Affairs Office
Ford Motor Company

Suite 340 — 925 L Street
Sacramento, California 95814
Telephone: 916/442-0111
442-2929
Facsimile: 441-7356

Honorable Shiell Anderson, Chair
House Transportation Committee
Capitol Station
Helena, Montana 59620

Dear Chairman Anderson:

The Ford Motor Company is opposed to the enactment of Senate Bill 343 which is scheduled for hearing in the House Transportation Committee.

We are particularly concerned about two provisions of this bill which override existing franchise agreements:

Section 12, Page 16, Lines 7-9, would authorize dealers to place rival line vehicles in existing dealerships without manufacturer approval. (Note: dealers may currently own as many separate facility dealerships as they wish.) While this so-called "dualing" concept may be appropriate in small communities, we strongly believe that manufacturers should be able to evaluate and approve the compatibility of vehicle lines, the adequacy of sales and service facilities and other business factors. The manufacturers have offered amendments that would place them in the approval process, but they were rejected by the proponents of the bill.

Section 12, Page 16, Lines 19-21, would ban manufacturers' national vehicle allocation plans and require manufacturers to fill vehicle orders as they arrive at the factory. The provision is totally unworkable, especially as it pertains to vehicles that are in short supply. Automobile manufacturers carefully coordinate production and distribution of vehicles to ensure a fair and continuous supply of vehicles to dealers nationwide. This bill would completely disrupt this system.

The Ford Motor Company respectfully urges your "no" vote on this measure.

Sincerely,

Steve Blankenship
Regional Manager
Governmental Affairs

EXHIBIT 10
DATE 3-14-97
SB 343

CHRYSLER CORPORATION

Chrysler Corporation

March 14, 1997

The Honorable Shiell Anderson, Chair
House Transportation Committee
Montana House of Representatives
Capitol Station
Helena, Montana 58620

Re: Montana Senate Bill 343

Dear Chairperson Anderson:

I am writing you to express Chrysler's opposition to Senate Bill 343. It is important to recognize that this legislation further regulates the relationship of the Automobile Dealers of Montana and the Chrysler Corporation and would interfere in our contractual relationships.

We have two major areas of concern with SB 343. Senate Bill 343 would regulate the allocation of vehicles and restricts the ability of manufactures to limit other line-makes with which their dealers can "dual".

Senate Bill 343 would require Chrysler to provide any advertised vehicle to a new car dealer in Montana upon demand. As you may be aware, this requirement is burdensome to our distribution process and highly unlikely that we will be able to satisfactorily comply. Shortages of popular vehicle do occur from factors that are beyond our control.

Further, SB 343 would limit our right to approve or disapprove a franchisees right to "dual" with a franchise of another line-make. Sound business practices dictate the necessity to retain this option. To provide consumers with adequate service, and to market vehicles efficiently, it may be necessary to market and service vehicles in a single facility.

In closing, Senate Bill 343 contains language that is Anti-Business and Anti-Consumer. I urge you and the members of the House Transportation Committee to Vote No on Senate Bill 343.

With this wish, I am

Sincerely yours,

Leven C. Weiss
Regional Government Affairs Manager

1000 Chrysler Drive
Auburn Hills MI 48326-2766

HOUSE OF REPRESENTATIVES

TRANSPORTATION COMMITTEE

ROLL CALL DATE 3-14-97

NAME	PRESENT	ABSENT	EXCUSED
SHIELL ANDERSON, CHAIRMAN			✓
RICK JORE, VICE CHAIR MAJ.	✓		
PAT GALVIN, VICE CHAIR MIN.	✓		
JOE BARNETT	✓		
ROD BITNEY	✓		
SYLVIA BOOKOUT	✓		
MATT BRAINARD			✓
BOB CLARK			✓
CHARLES DEVANEY	✓		
DAVID EWER	✓		
SONNY HANSON			✓
MARIAN HANSON	✓		
ROD MARSHALL	✓		
GERALD PEASE			✓
BILL RYAN			✓
DOROTHY SIMPSON	✓		
JACK WELLS	✓		
BILL WHITEHEAD	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Transportation COMMITTEE DATE 3-14-97

BILL NO. SB 343 SPONSOR(S) Senator Thomas

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Tom Harrison	Mt Auto Dealers Assoc	✓	
Charles R Brooks	Billings AREA Chamber	✓	
Bob Gilbert	MADRA MT Tow Truck Assn	✓	
Drew Roberts	Dept Motor Veh. Div	✓	
Bob Small	4 Seasons Motors Missoula	✓	
E.G. Leipheimer	MT Auto Dealers Ass	✓	
Brad Griffin	MT Hardware & Imp Assn	✓	
Dave Brown	MT Independent Auto Dealers Association	✓	
Jim Ufferback	MT Auto Dealers	✓	
Brenda Nordlund	Mt Dept of Justice	✓	
Steve Turkiewicz	Mt Auto Dealers Assn	✓	
Calvin Eleby JR	American Automobile Manufacturers Assn		✓
Bob Zobrist	Ford Motor Co.		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Transportation COMMITTEE DATE 3-14-97

BILL NO. SB 343 SPONSOR(S) Sen Thomas

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Mona Jamison	General Motors Amer. Auto. Manu. Assn.		✓
David Aveza	MT Chamber	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TRANSPORTATION

Call to Order: By Chairman Shiell Anderson, on March 21, 1997, at 3:00 p.m., in Room 420

ROLL CALL

Members Present:

Rep. Shiell W. Anderson, Chairman (R)
Rep. Rick Jore, Vice Chairman (Majority) (R)
Rep. Patrick G. Galvin, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Marian W. Hanson (R)
Rep. Rod Marshall (R)
Rep. Gerald Pease (D)
Rep. William M. "Bill" Ryan (D)
Rep. Jack Wells (R)
Rep. Bill Whitehead (D)

Members Excused: Rep. Matt Brainard
Rep. Bob Clark
Rep. David Ewer
Rep. Dorothy Simpson

Staff Present: Leanne Kurtz, Legislative Services Division
Mary Lou Schmitz, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 610 - 1-17-97
SJR 9 - 1-11-97
SB 335 - 1-11-97
SB 360 - 1-11-97
SB 188 - 1-11-97

Executive Action: SB 343 BE CONCURRED IN

HEARING ON HB 610

"AN ACT ESTABLISHING A LEGISLATIVE COMMITTEE TO STUDY THE REVENUE AND EXPENDITURES OF THE HIGHWAYS STATE SPECIAL REVENUE ACCOUNT AND MONTANA'S TRANSPORTATION INFRASTRUCTURE NEEDS; PROVIDING FOR APPOINTMENTS TO THE COMMITTEE; APPROPRIATING FUNDS FOR THE OPERATION OF THE COMMITTEE AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

{Tape: 1; Side: B; Approx. Time Count: 18.0; }
Closing by Sponsor: Senator Jenkins closed the Hearing on SB 335.

HEARING ON SJR 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO ACT IN A TIMELY FASHION TO REAUTHORIZE THE FEDERAL SURFACE TRANSPORTATION PROGRAM AND TO CONTINUE TO RECOGNIZE THE NATIONAL INTEREST IN THE INVESTMENT IN HIGHWAYS THAT SERVE AND CROSS RURAL WESTERN STATES.

Sponsor: Senator Barry Stang, SD 36.

{Tape: 1; Side: B; Approx. Time Count: 18.2; }
Opening Statement by Sponsor: Senator Stang said this is a Senate Joint Resolution that was requested in the Senate Highway and Transportation Committee.

{Tape: 1; Side: B; Approx. Time Count: 19.4; }
Proponents: Jim Currie, Department of Transportation.

Jim Crane, Montana Contractors' Association.

Steve Turkiewicz, Montana Auto Dealers' Association.

Opponents: None

Informational Testimony: None

{Tape: 1; Side: B; Approx. Time Count: 24.4; }
Questions From Committee Members and Responses: Reps. Bitney, Jore.

Responses by Jim Currie; Senator Stang;

{Tape: 1; Side: B; Approx. Time Count: 27.4; }
Closing by Sponsor: Senator Stang closed the Hearing on SJR 9.

EXECUTIVE ACTION ON SB 343

Motion: Rep. Devaney moved BE CONCURRED IN.

Amendment: Rep. Wells moved his first Amendment.

{Tape: 1; Side: B; Approx. Time Count: 30.2; }
Discussion: Reps. Wells, Sonny Hanson, Marshall, Bitney, Anderson, Devaney.

Vote: Motion on Amendment failed 2 - 12.

Motion/Vote: Rep. Marshall moved to TABLE SB 343. Motion failed 3 - 11.

{Tape: 1; Side: B; Approx. Time Count: 57.0; }
Amendment: Rep. Wells moved his second Amendment.

Discussion: Reps. Wells, Sonny Hanson, Anderson, Barnett, Marian Hanson, Bitney.

Responses by Leanne Kurtz.

Vote: Motion failed 2 - 12.

Amendment: Rep. Wells moved his third Amendment.

{Tape: 1; Side: B; Approx. Time Count: 67.1; }
Discussion: Reps. Wells, Sonny Hanson, Devaney, Marshall, Bitney, Galvin, Anderson, Jore, Devaney,

Responses by Leanne Kurtz.

Vote: Motion failed 2 - 12.

Amendment: Rep. Wells moved his fourth Amendment.

Vote: Motion failed 2-12.

{Tape 1; Side: B; Approx. Time Count: 81.9)
Discussion: Reps. Jore, Wells, Devaney, Barnett, Bitney, Anderson.
{Tape: 2; Side: A; Approx. Time Count: 0.2; }

Motion/Vote: Rep. Devaney's original motion BE CONCURRED IN carried 12 - 2.

HOUSE OF REPRESENTATIVES

TRANSPORTATION COMMITTEE

ROLL CALL DATE 3-21-97

NAME	PRESENT	ABSENT	EXCUSED
SHIELL ANDERSON, CHAIRMAN	✓		
RICK JORE, VICE CHAIR MAJ.	✓		
PAT GALVIN, VICE CHAIR MIN.	✓		
JOE BARNETT	✓		
ROD BITNEY	✓		
SYLVIA BOOKOUT	✓		
MATT BRAINARD			✓
BOB CLARK			✓
CHARLES DEVANEY	✓		
DAVID EWER			✓
SONNY HANSON	✓		
MARIAN HANSON	✓		
ROD MARSHALL	✓		
GERALD PEASE	✓		
BILL RYAN	✓		
DOROTHY SIMPSON			✓
JACK WELLS	✓		
BILL WHITEHEAD	✓		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

TRANSPORTATION COMMITTEE

DATE 3-21-97 BILL NO. SB343 NUMBER

MOTION: Rep. Devaney moved Be Concurred In

NAME	AYE	NO
SHIELL ANDERSON, CHAIRMAN		
RICK JORE, VICE CHAIRMAN MAJ.		
PAT GALVIN, VICE CHAIRMAN MIN.		
JOE BARNETT		
ROD BITNEY		
SYLVIA BOOKOUT		
MATT BRAINARD		
BOB CLARK		
CHARLES DEVANEY		
DAVID EWER		
SONNY HANSON		
MARIAN HANSON		
ROD MARSHALL		
GERALD PEASE		
BILL RYAN		
DOROTHY SIMPSON		
JACK WELLS		
BILL WHITEHEAD		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

TRANSPORTATION COMMITTEE

DATE 3-21-97 BILL NO. SB 343 NUMBER

MOTION: Rep. Wells moved an Amendment (1st) Motion failed 2-12

NAME	AYE	NO
SHIELL ANDERSON, CHAIRMAN		✓
RICK JORE, VICE CHAIRMAN MAJ.	✓	
PAT GALVIN, VICE CHAIRMAN MIN.		✓
JOE BARNETT		✓
ROD BITNEY		✓
SYLVIA BOOKOUT		✓
MATT BRAINARD		
BOB CLARK		
CHARLES DEVANEY		✓
DAVID EWER		
SONNY HANSON		✓
MARIAN HANSON		✓
ROD MARSHALL		✓
GERALD PEASE		✓
BILL RYAN		✓
DOROTHY SIMPSON		
JACK WELLS	✓	
BILL WHITEHEAD		✓
	2	12

Amendments to Senate Bill No. 343
Third Reading Copy

Requested by Rep. Wells
For the Committee on Transportation

Prepared by Leanne Kurtz
March 19, 1997

1. Page 16, lines 9 through 11.
Strike: "if" on line 9 through "manufacturer" on line 11
Insert: "unless justified by reasonable business considerations"

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

TRANSPORTATION COMMITTEE

DATE 3-21-97 BILL NO. SB343 NUMBER

MOTION: Rep. Marshall moved to Table

motion failed

NAME	AYE	NO
SHIELL ANDERSON, CHAIRMAN		✓
RICK JORE, VICE CHAIRMAN MAJ.	✓	
PAT GALVIN, VICE CHAIRMAN MIN.		✓
JOE BARNETT		✓
ROD BITNEY		✓
SYLVIA BOOKOUT		✓
MATT BRAINARD		
BOB CLARK		
CHARLES DEVANEY		✓
DAVID EWER		
SONNY HANSON		✓
MARIAN HANSON		✓
ROD MARSHALL	✓	
GERALD PEASE		✓
BILL RYAN		✓
DOROTHY SIMPSON		
JACK WELLS	✓	
BILL WHITEHEAD		✓
	3	11

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

TRANSPORTATION COMMITTEE

DATE 3-21-97 BILL NO. SB343 NUMBER

MOTION: Rep. Wells moved a second amendment

Motion failed 2-12

NAME	AYE	NO
SHIELL ANDERSON, CHAIRMAN		✓
RICK JORE, VICE CHAIRMAN MAJ.	✓	
PAT GALVIN, VICE CHAIRMAN MIN.		✓
JOE BARNETT		✓
ROD BITNEY		✓
SYLVIA BOOKOUT		✓
MATT BRAINARD		
BOB CLARK		
CHARLES DEVANEY		✓
DAVID EWER		
SONNY HANSON		✓
MARIAN HANSON		✓
ROD MARSHALL		✓
GERALD PEASE		✓
BILL RYAN		✓
DOROTHY SIMPSON		
JACK WELLS	✓	
BILL WHITEHEAD		✓
	2	12

Amendments to Senate Bill No. 343
Third Reading Copy

Requested by Rep. Wells
For the Committee on Transportation

Prepared by Leanne Kurtz
March 19, 1997

1. Page 16, line 19.
Following: ";"
Insert: "or"

2. Page 16, line 22.
Strike: "; or"
Insert: "."

3. Page 16, lines 23 through 26.
Strike: subsection (1)(c) in its entirety

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

TRANSPORTATION COMMITTEE

DATE 3-21-97 BILL NO. SB 343 NUMBER

MOTION: Rep. Wells moved his 3rd Amendment Motion failed 2-12

NAME	AYE	NO
SHIELL ANDERSON, CHAIRMAN		✓
RICK JORE, VICE CHAIRMAN MAJ.	✓	
PAT GALVIN, VICE CHAIRMAN MIN.		✓
JOE BARNETT		✓
ROD BITNEY		✓
SYLVIA BOOKOUT		✓
MATT BRAINARD		
BOB CLARK		
CHARLES DEVANEY		✓
DAVID EWER		
SONNY HANSON		✓
MARIAN HANSON		✓
ROD MARSHALL		✓
GERALD PEASE		✓
BILL RYAN		✓
DOROTHY SIMPSON		
JACK WELLS	✓	
BILL WHITEHEAD		✓
	2	12

Amendments to Senate Bill No. 343
Third Reading Copy

Requested by Rep. Wells
For the Committee on Transportation

Prepared by Leanne Kurtz
March 19, 1997

1. Page 16, line 19.
Following: ";"
Insert: "or"

2. Page 16, lines 20 through 22.
Strike: subsection (1)(b) in its entirety
Renumber: subsequent subsection

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

TRANSPORTATION COMMITTEE

DATE 3-21-97 BILL NO. SB 343 NUMBER

MOTION: Rep. Wells moved his 4th Amendment Motion failed 2-12

NAME	AYE	NO
SHIELL ANDERSON, CHAIRMAN		✓
RICK JORE, VICE CHAIRMAN MAJ.	✓	
PAT GALVIN, VICE CHAIRMAN MIN.		✓
JOE BARNETT		✓
ROD BITNEY		✓
SYLVIA BOOKOUT		✓
MATT BRAINARD		
BOB CLARK		
CHARLES DEVANEY		✓
DAVID EWER		
SONNY HANSON		✓
MARIAN HANSON		✓
ROD MARSHALL		✓
GERALD PEASE		✓
BILL RYAN		✓
DOROTHY SIMPSON		
JACK WELLS	✓	
BILL WHITEHEAD		✓

Amendments to Senate Bill No. 343
Third Reading Copy

Requested by Rep. Wells
For the Committee on Transportation

Prepared by Leanne Kurtz
March 20, 1997

1. Page 10, lines 5 through 8.
Strike: "adjudication" on line 5 through "process" on line 8
Insert: "determination of the issues raised in the complaint"

2. Page 14, lines 12 through 15.
Following: "until the"
Strike: "adjudication" on line 12 through "process" on line 15
Insert: "final determination of the issues raised in the notice and objection"

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

TRANSPORTATION COMMITTEE

DATE 3-21-97 BILL NO. SB 343 NUMBER

MOTION: Rep. Devaney moved Be Concurred In motion carried 12-2

NAME	AYE	NO
SHIELL ANDERSON, CHAIRMAN	✓	
RICK JORE, VICE CHAIRMAN MAJ.		✓
PAT GALVIN, VICE CHAIRMAN MIN.	✓	
JOE BARNETT	✓	
ROD BITNEY	✓	
SYLVIA BOOKOUT	✓	
MATT BRAINARD		
BOB CLARK		
CHARLES DEVANEY	✓	
DAVID EWER		
SONNY HANSON	✓	
MARIAN HANSON	✓	
ROD MARSHALL	✓	
GERALD PEASE	✓	
BILL RYAN	✓	
DOROTHY SIMPSON		
JACK WELLS		✓
BILL WHITEHEAD	✓	
	12	2

HOUSE STANDING COMMITTEE REPORT

March 24, 1997

Mr. Speaker: We, the committee on **Transportation** report that **Senate Bill 343** (third reading copy -- blue) **be concurred in**.

Signed: _____
Shiell Anderson, Chair

Carried by: Rep. Sliter

3.24.97

Committee Vote:
Yes 12, No 2.

640856SC.Hgd

SENATE BILL NO. 343

INTRODUCED BY THOMAS, SLITER, LYNCH, HARP, BECK, BITNEY, GILLAN, HALLIGAN, GRADY, MOHL, JERGESON, STANG, HIBBARD, PAVLOVICH, TROPILA, HERTEL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING LAWS GOVERNING MOTOR VEHICLE DEALERS, MANUFACTURERS, AND DISTRIBUTORS; AND AMENDING SECTIONS 61-4-101, 61-4-104, 61-4-120, 61-4-121, 61-4-131, 61-4-133, 61-4-134, 61-4-201, 61-4-205, 61-4-206, 61-4-207, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-4-101, MCA, is amended to read:

"**61-4-101. Application for dealer's license or wholesaler's license.** (1) (a) A verified application for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department by each person, firm, corporation, or association that, for commission or profit, engages in:

(i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, mobile homes, or special mobile equipment as defined in 61-1-104; or

(ii) business as a wholesaler as defined in 61-1-319.

(b) A licensed real estate broker or agent lawfully buying, selling, exchanging, taking for consignment, or acting as a broker of mobile homes is exempt from licensure under this section.

(c) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any 1 calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

(d) Each license application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required. Each application must be accompanied by the

license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department ~~prior to~~ before the expiration of the license, the licensee may operate the business and display dealer or demonstrator plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as provided in this subsection, the applicant ~~must~~ shall furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant ~~must~~ shall:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name, ~~and~~ address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) identify other dealerships owned by the applicant, identify all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclose whether the applicant or other person with interest in a dealership owned by the applicant has been convicted of a felony;

(iv) certify that the applicant has acquired and shall maintain motor vehicle liability insurance, pursuant to 61-6-301, for any vehicle offered for demonstration or loan to a customer;

~~(iii)~~(v) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

~~(iv)~~(vi) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

~~(v)~~(vii) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

~~(vi)~~(viii) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational vehicle dealer and for the use of "RV" plates; as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates; or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set forth in subsections (2)(a)(i) ~~and (2)(a)(ii)~~ through (2)(a)(iv), provide:

(i) a statement that the:

(A) applicant has an established place of business that includes a lot or lots upon which motor vehicles may be displayed and a permanent nonresidential building on or contiguous to the lot or lots where records are kept and sales are made; or

(B) wholesaler applicant has an established place of business that includes a permanent nonresidential building or office where records are kept in order that those records may be inspected;

(ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that the person is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) If two or more vehicle dealer or wholesaler businesses share a location, all records, office facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's established place of business shall display a sign that indicates the firm name and that vehicles are offered for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

(e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) (a) The applicant for a dealer's or wholesaler's license shall also file with ~~his~~ the application a bond of ~~$25,000~~ ~~$50,000~~ $25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a trailer wholesaler shall file the ~~$25,000~~ ~~$50,000~~ $25,000 surety bond only if special mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded

weight, mobile homes, or house trailers are sold~~;~~. ~~otherwise, all~~ All other trailer dealer, motorcycle dealer, or wholesaler license applicants shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same place of business, provided that all types of licenses are indicated on the face of the bond. All bonds must run to the state of Montana, must be approved by the department, ~~and~~ must be filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required."

Section 2. Section 61-4-104, MCA, is amended to read:

"**61-4-104. Record of purchase or sale.** A dealer or wholesaler licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description in the case of motor vehicles must also include the vehicle identification number and engine number, if any, ~~maker's number, if any, chassis number, if any, and other numbers or identification marks that appear on the motor vehicle~~ and must include a statement that a number has been obliterated, defaced, or changed if ~~such is the fact~~ that has occurred. In the case of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear ~~thereon~~ on the trailer, semitrailer, or special mobile equipment. The dealer or wholesaler must also have ~~in his possession,~~ a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle is delivered to ~~him~~ the dealer or wholesaler until it has been disposed of by ~~him~~ the dealer or wholesaler, ~~a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler~~. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign the certificate of ownership or manufacturer's certificate of origin for vehicles sold. All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure

information under 61-3-206(4), must be physically located and maintained within the building referred to in 61-4-101(2)(b)(i). An authorized representative of the department, upon presentation of ~~his~~ the representative's credentials, may inspect and have access to and copy any records required under this chapter."

Section 3. Section 61-4-120, MCA, is amended to read:

"**61-4-120. Application for auto auction license -- general regulations.** (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises, including ~~(~~street address, city, county, and state~~)~~, where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative thereof, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with

current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of ~~$25,000~~ ~~$50,000~~ $25,000 and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually. A person who suffers loss or damage due to the unlawful conduct of an auto auction licensed under this section may proceed in the same manner as provided for licensed dealers and wholesalers in 61-4-101(3)(b).

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, date of sale, name, address, license number, and authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than $10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the auto auction to issue more than one temporary permit per vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting,

upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the vehicle identification number ~~or~~ and engine number, if any; and

(ii) ~~other numbers or identification marks on the motor vehicle; and~~

~~(iii)~~ a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ownership at a location on the front or back of the certificate, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

(i) name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) ~~the~~ date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer data base or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgement for the buyer under the provisions of 61-3-206."

Section 4. Section 61-4-121, MCA, is amended to read:

"**61-4-121. Twenty-day permit -- limitation on issuance and transfer -- violation -- penalty.** (1) (a) A dealer may not issue more than one 20-day permit under 61-4-111 or 61-4-112 per vehicle sale.

(b) A dealer may not transfer 20-day permits to another dealer unless the dealer:

(i) notifies the department within 3 days of the transfer;

(ii) identifies to the department the dealer to whom any permits have been transferred;

(iii) informs the department of the date of the transfer and the quantity and serial numbers of ~~vehicles covered by~~ the transferred permits.

(2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege to issue 20-day permits for a period of time determined by the department."

Section 5. Section 61-4-131, MCA, is amended to read:

"**61-4-131. Definitions.** As used in 61-4-131 through 61-4-137, ~~the following definitions apply:~~

~~(1) "Department" means the department of commerce.~~

~~(2)~~ "~~Designated~~ "designated family member" means the spouse, child, grandchild, parent, brother,

or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed ~~him~~ the deceased in the motor vehicle dealership, or under the laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer."

Section 6. Section 61-4-133, MCA, is amended to read:

"**61-4-133. Refusal to honor succession to ownership -- notice required.** (1) If a manufacturer, factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer under the existing franchise agreement, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than ~~60~~ 90 days from the date ~~such~~ the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than ~~60~~ 90 days from the date ~~such~~ the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the family member and the department or if the department rules in favor of the complainant in a hearing held pursuant to 61-4-134, the franchise agreement ~~shall~~ must continue in effect subject to termination only as otherwise permitted by law."

Section 7. Section 61-4-134, MCA, is amended to read:

"**61-4-134. Procedure to determine right to succeed.** (1) Any designated family member who receives notice of the manufacturer's, factory branch, distributor's, or importer's refusal to honor ~~his~~ the family member's succession to the ownership and operation of the dealership may, within the ~~60-day~~ 90-day period, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by showing that the succession would be detrimental to the public interest or to the representation of the manufacturer, factory branch, distributor, or importer.

(3) The franchise agreement ~~shall~~ must continue in effect until the final ~~determination of the issues raised in the complaint~~ adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the designated family member. The manufacturer, factory branch, distributor, or importer and the designated family member shall abide by the terms of the franchise agreement and the laws of Montana during the appeals process.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to ~~part 7, chapter 4,~~ Title 2, chapter 4, part 7."

Section 8. Section 61-4-201, MCA, is amended to read:

"**61-4-201. Definitions.** As used in this part, the following definitions apply:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

~~(2) "Department" means the department of justice.~~

~~(3)~~(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

~~(4)~~(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

~~(5)~~(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

~~(6)~~(5) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor;

(c) the franchisee, as a separate business, constitutes a component of franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

~~(7)~~(6) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services such new motor vehicles to and for the general public.

~~(8)~~(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

~~(9)~~(8) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

~~(10)~~(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment~~, which~~ that, when installed, ~~form~~ forms an integral part of the new motor vehicle and ~~which~~ that constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(10) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

(12) (a) "Retail sale" means the sale of a new motor vehicle.

(b) "Retail sale" does not mean a sale:

(i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or

(ii) that is the result of a transfer between two licensed new motor vehicle dealers."

Section 9. Section 61-4-205, MCA, is amended to read:

"**61-4-205. Limitations on cancellation and termination.** (1) Notwithstanding the terms, provisions,

or conditions of any agreement or franchise, ~~no~~ a franchisor may not cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) ~~No~~ A franchisor may not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and that it is in the public interest.

(3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than ~~30~~ 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. ~~No~~ A notice of intention to terminate or not continue a franchise ~~may be~~ is not required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice ~~shall~~ must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices ~~shall~~ must be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons~~, such copy to be in the form and substance and given in the manner the department finds appropriate~~.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse, son, or daughter, the franchisor shall give effect to ~~such a change~~ the sale or transfer of ownership in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, ~~no~~ a license under 61-4-101 through 61-4-105 may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor."

Section 10. Section 61-4-206, MCA, is amended to read:

"**61-4-206. Objections -- hearing.** (1) A person who receives or is entitled to receive a copy of a notice provided for in ~~subsection (4) of~~ 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If ~~no~~ an objection is not filed within 15 days from the date the notice was received, the proposed action ~~shall~~ must be approved.

(2) If a timely objection has been filed, the department shall enter an order fixing the time, which ~~shall~~ must be within 30 days of the date of the order, and place of a hearing on the objection and shall send by certified mail with return receipt requested a copy of the notice provided for in ~~subsection (4) of~~ 61-4-205(4).

(3) The department may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.

(4) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, ~~or~~ not continue, or not establish the franchise. ~~When there is an objection to the establishment of a new motor vehicle dealership, the burden of proof that good cause does exist shall be with the franchisor.~~

(5) The rules of evidence for ~~such~~ a hearing provided for in subsection (2) ~~shall be~~ are the same

as those found in ~~chapter 4,~~ Title 2, chapter 4. The department shall reasonably apportion all costs between the parties.

(6) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing ~~shall~~ must be conducted pursuant to ~~chapter 4,~~ Title 2, chapter 4.

(7) A transcript of the testimony of each witness taken at the hearing ~~shall~~ must be made and preserved. Within 30 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(8) Any party to the hearing before the department may appeal pursuant to ~~chapter 4,~~ Title 2, chapter 4.

(9) The franchise agreement must continue in effect until the adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process."

Section 11. Section 61-4-207, MCA, is amended to read:

"**61-4-207. Determination of good cause.** (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by the franchise;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of ~~his~~ the franchisee's part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the

franchisee if the franchisor reimburses the franchisee for ~~such~~ warranty work performed by the franchisee; and

(g) except as provided in subsection (2) ~~of this section~~, failure by the franchisee to substantially comply with ~~those~~ the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(a) a change in ownership of the franchisee's dealership; or

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make ~~which shall include the adequacy of new motor vehicle dealer sales and service facilities, equipment, supply of parts, and qualified management, sales, and service personnel~~."

Section 12. Section 61-4-208, MCA, is amended to read:

"**61-4-208. ~~Coercion prohibited~~ Prohibited acts.** (1) A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, importer, field representative, officer, agent, or any representative ~~thereof~~ of the persons or entities listed may not:

(a) coerce, ~~or~~ attempt to coerce, or require a new motor vehicle dealer to:

~~(1)~~(i) accept delivery of a new motor vehicle, a part, or an accessory ~~therefor~~ for a new motor vehicle or any other commodity that has not been ordered by the dealer;

~~(2)~~(ii) participate in or contribute to any local, regional, or national advertising fund or to participate

in or to contribute to contests, giveaways, or other sales devices; ~~or~~

(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion;

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer that was established before [the effective date of this act] when those requirements are not justified by reasonable business considerations;

(v) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

~~(3)~~(vi) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative ~~thereof~~ of the listed persons or entities or do any other act unfair to the dealer by:

~~(a)~~(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative ~~thereof~~ of the listed persons or entities and the dealer; or

~~(b)~~(B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent ~~thereof~~ of the listed entities~~.~~;

(b) delay, refuse, or fail to deliver new vehicles in a reasonable time in reasonable quantity relative to the new vehicle dealer's facilities and sales potential after accepting an order from a new vehicle dealer if the new vehicles are publicly advertised as being available for immediate delivery; or

(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards.

(2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities."

NEW SECTION. **Section 13. Manufacturer's right of first refusal.** (1) Regardless of the terms of

any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor may exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership. This may occur if the sale or transfer is conditioned upon either the manufacturer or dealer entering into a dealer agreement with the proposed new owner or transferee if all the following requirements are met:

(a) the manufacturer or distributor notifies the dealer in writing of the manufacturer's or dealer's intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale or transfer;

(b) the dealer and the dealer's owner receive the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;

(c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners or to a qualified manager, partnership, or corporation controlled by a member of the family of a dealer owner; and

(d) the manufacturer or distributor agrees to pay reasonable costs and attorney fees relative to the proposed changes in ownership or transfer of dealership assets. In order for costs and fees to be payable, the dealer shall submit an accounting of the expenses within 20 days of the dealer's receipt of the manufacturer's or distributor's written request for the accounting. The manufacturer or distributor may request the accounting before exercising the manufacturer's or distributor's right of first refusal.

(2) This section does not affect any contractual right of a manufacturer or distributor to charge back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's purchase of the vehicles.

NEW SECTION. **Section 14. Codification instruction.** [Section 13] is intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to [section 13].

NEW SECTION. **Section 15. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

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